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MONTANA LEGISLATIVE HISTORY

Chapter 543 ~~19~~ 2001

Bill H _____ S 48 Original bill & history X C

H. Committee on BUSINESS & LABOR

Hearing Date(s) 3/9 X C

EXEC. ACTION 3/21 X C

_____ C

_____ C

Date Out _____ C

S. Committee on BUSINESS & LABOR

Hearing Date(s) 2/7 X C

EXECUTIVE ACTION 2/14 X C

_____ C

_____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Bill Draft Number: LC0358
Bill Type - Number: SB 48
Short Title: Clarify out-of-state direct shipment of alcoholic beverages to Montanans
Primary Sponsor: Mike Sprague

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 78

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/01/2001			
(S) Signed by Governor	05/01/2001			
(S) Transmitted to Governor	04/23/2001			
(H) Signed by Speaker	04/23/2001			
(S) Signed by President	04/21/2001			
(S) Returned from Enrolling	04/21/2001			
(C) Sent to Printing	04/20/2001			
(C) Sent to Printing	04/20/2001			
(S) Sent to Enrolling	04/19/2001			
(H) Motion Carried	04/19/2001			
(H) Motion Carried	04/19/2001			
(H) Motion Carried	04/19/2001			
(H) 3rd Reading Conference Committee Report Adopted	04/19/2001	66	34	
(H) Scheduled for 3rd Reading	04/19/2001			
(H) Motion Carried	04/18/2001			
(H) 2nd Reading Conference Committee Report Adopted	04/18/2001	64	36	
(H) Scheduled for 2nd Reading	04/18/2001			
(S) Revised Fiscal Note Printed	04/11/2001			
(S) Revised Fiscal Note Signed	04/10/2001			
(S) Revised Fiscal Note Received	04/10/2001			
(S) Motion Carried	04/09/2001			
(S) Revised Fiscal Note Requested	04/09/2001			
(S) 3rd Reading Conference Committee Report Adopted	04/09/2001	42	5	
(S) 2nd Reading Conference Committee Report Adopted on Voice Vote	04/07/2001	42	1	
(S) Scheduled for 2nd Reading	04/07/2001			
(S) Conference Committee Report Received	04/06/2001			(S) Conference
(H) Conference Committee Report Received	04/06/2001			(H) Conference
(S) Hearing	04/06/2001			(S) Conference
(H) Conference Committee Appointed	04/05/2001			

(S) Conference Committee Appointed	04/04/2001			
(S) 2nd Reading House Amendments Not Concurred on Voice Vote	04/03/2001	49	0	
(S) Scheduled for 2nd Reading	04/03/2001			
(H) Returned to Senate with Amendments	03/31/2001			
(H) 3rd Reading Concurred	03/31/2001	83	17	
(H) Scheduled for 3rd Reading	03/31/2001			
(H) Motion Carried	03/29/2001			
(H) Motion Carried	03/29/2001			
(H) Motion Carried	03/29/2001			
(H) Motion Carried	03/29/2001			
(H) 2nd Reading Concurred	03/29/2001	76	24	
(H) Scheduled for 2nd Reading	03/29/2001			
(S) Revised Fiscal Note Printed	03/28/2001			
(S) Revised Fiscal Note Received	03/28/2001			
(S) Revised Fiscal Note Requested	03/23/2001			
(C) Sent to Printing	03/22/2001			
(H) Committee Report--Bill Concurred as Amended	03/22/2001			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred as Amended	03/21/2001	17	2	(H) Business and Labor
(H) Hearing	03/09/2001			(H) Business and Labor
(H) Referred to Committee	03/03/2001			(H) Business and Labor
(H) First Reading	03/03/2001			
(S) Transmitted to House	02/19/2001			
(S) 3rd Reading Passed	02/19/2001	48	2	
(S) Scheduled for 3rd Reading	02/19/2001			
(S) 2nd Reading Passed on Voice Vote	02/17/2001	48	0	
(S) Scheduled for 2nd Reading	02/17/2001			
(C) Sent to Printing	02/16/2001			
(S) Committee Report--Bill Passed as Amended	02/14/2001			(S) Business and Labor
(S) Committee Executive Action--Bill Passed as Amended	02/14/2001	9	0	(S) Business and Labor
(S) Hearing	02/07/2001			(S) Business and Labor
(S) Hearing Canceled	01/08/2001			(S) Business and Labor
(S) Fiscal Note Printed	01/05/2001			
(S) Fiscal Note Signed	01/04/2001			
(S) Fiscal Note Received	01/04/2001			

(S) Referred to Committee	01/03/2001	(S) Business and Labor
(S) First Reading	01/03/2001	
(S) Fiscal Note Requested	12/07/2000	
(C) Introduced Bill Text Available Electronically	12/06/2000	
(S) Introduced	12/06/2000	
(C) Pre-Introduction Letter Sent	11/27/2000	
(C) Draft in Assembly/Executive Director Review	11/20/2000	
(C) Draft in Final Drafter Review	11/17/2000	
(C) Bill Draft Text Available Electronically	11/17/2000	
(C) Draft in Input/Proofing	11/17/2000	
(C) Draft to Drafter - Edit Review [CAJ]	11/17/2000	
(C) Draft in Edit	11/16/2000	
(C) Draft in Legal Review	11/16/2000	
(C) Draft to Requester for Review	11/11/2000	
(C) Draft Request Received	10/17/2000	

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Legislative Council	
Drafter	Martin	Jeff
By Request Of	Department of Revenue	
Primary Sponsor	Sprague	Mike

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Trade Regulations and Competition		Simple	TRAD
Alcohol and Drugs		Simple	ALC

Additional Bill Information

Probable Fiscal Note: Yes
Preintroduction Required: Y
Session Law Ch. Number: 543
DEADLINE

Category: General Bills
Transmittal Date: 02/23/2001
Return (with 2nd house amendments) Date: 03/31/2001

Section Effective Dates

Section(s)	Effective Date Date Qualified
Sections 7-11	01-OCT-01
Sections 1-6, 12, and 13	01-MAY-01

SENATE BILL NO. 48

INTRODUCED BY M. SPRAGUE

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING OUT-OF-STATE SHIPPERS OF ALCOHOLIC BEVERAGES TO SHIP BEER, WINE, OR HARD CIDER DIRECTLY TO MONTANA RESIDENTS; AND ESTABLISHING PENALTIES FOR ILLEGAL SHIPMENTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Legislative findings and declaration of public policy.** (1) The legislature finds that the direct shipment of beer, wine, and hard cider by persons in the business of selling alcoholic beverages in other states or countries to residents of this state in violation of this code poses a serious threat to the public health, safety, revenue, and economy of this state.

(2) The legislature further finds that existing penalties for illegal direct shipments of beer, wine, and hard cider to residents of this state are inadequate to ensure compliance with the law.

(3) The legislature declares as a matter of public policy that the provisions of [sections 1 through 3] are fully consistent with the powers conferred upon the state by the 21st amendment to the United States constitution.

NEW SECTION. **Section 2. Direct shipment of beer, wine, and hard cider prohibited.** (1) A person may not ship or cause to be shipped beer, wine, or hard cider from an out-of-state location directly to any person in this state who does not hold a valid wholesaler's license issued by the department.

(2) A common carrier or an operator of a privately owned automobile, truck, bus, or other conveyance may not deliver beer, wine, or hard cider to any person in this state who does not hold a valid wholesaler's license issued by the department.

(3) This section does not prohibit an out-of-state shipper who is validly licensed by or registered with the department from shipping beer, wine, or hard cider to a wholesaler in the state who holds a valid license issued by the department.

NEW SECTION. **Section 3. Penalties for violation.** A person who violates the provisions of [section

2] is guilty of a felony and upon conviction shall be punished by a fine of not less than $1,000 or more than $5,000, by imprisonment in the state prison for not less than 1 year or more than 5 years, or both. The penalties imposed by this section may be in addition to any civil penalties imposed under this code.

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 16, chapter 6, part 3, and the provisions of Title 16, chapter 6, part 3, apply to [sections 1 through 3].

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 7, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)

Members Excused: None.

Members Absent: Sen. Don Ryan (D)

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 48, 2/4/2001; SB 298, 2/4/2001; HB 138, 2/4/2001
Executive Action:

HEARING ON SB 48

Sponsor: **SENATOR MIKE SPRAGUE, SD 6, BILLINGS**

Proponents: **Kurt Alme, Department of Revenue**
Neil Peterson, Department of Revenue
Kristi Blazer, Mt Beer and Wine Wholesalers Assoc
Pat Montalban, Liquors Stores of Montana
Dale Markovich, Roach & Smith Distribution, Inc
Mike Parker, Beer & Wine Wholesaler
Kurt Winegardner,Winegardner's Wines
Brian Clark, Fun Beverage, Inc
Julie Millam, Christian Coalition
Brian Smith, Montana Brewers Association
Robert Zucconi, Zeke's Distributing Company

Opponents: **Timothy King, Representing himself**
Mona Jamison, Wine Institute
David Scrimm, Representing himself
Mary Arnold, Representing herself

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 2.4}

SENATOR MIKE SPRAGUE, SD 6, BILLINGS, said this bill has been reworked and has a new set of amendments, which he would let the proponents talk about. EXHIBIT **(bus31a01)**

Proponents' Testimony:

Kurt Alme, Department of Revenue, explained some of the points of this bill. EXHIBIT **(bus31a02)**

Neil Peterson, Department of Revenue, went through the exhibit handed out by Kurt Alme in more detail.

Kristi Blazer, Mt Beer and Wine Wholesalers Association, said the final amendments are made to fit Montana law. She said this is a clarification of law, not a change of law. She stated that the out-of-state shippers do not have a Montana liquor license so they are acting against Montana law. EXHIBIT **(bus31a03)** EXHIBIT **(bus31a04)**

Pat Montalban, Liquors Stores of Montana, said this bill will control sales to minors and help the liquor stores in Montana to make more money.

Dale Markovich, Roach & Smith Distribution, said in 1933 the three tier system was developed. Tier one was the brewer, tier two the wholesaler and tier three the retailer. He stated that one of the things the wholesaler does is collect taxes on the liquor. He pointed out that all states have the three tier system. EXHIBIT **(bus31a05)**

Mike Parker, Beer & Wine Wholesaler, said not to underestimate the impact of unregulated sales on the collection of revenue.

Kurt Winegardner, Winegardner's Wines, said it is the wholesalers' job to find hard-to-get wines for their customers.

Brian Clark, Fun Beverage, said the three tier system does work, when it is allowed to work. EXHIBIT **(bus31a06)**

Julie Millam, Christian Coalition, said they are concerned about underage access to alcohol over the internet.

Brian Smith, Montana Brewers Association, said it is the issue of underage access and taxes that he sees as a problem.

Robert Zucconi, Zeke's Distributing Company, supports this bill.

Opponents' Testimony:

Timothy King, Representing himself, said this bill would make him a felon for bringing wine into Montana for any reason. He said people are not ordering wine to circumvent the taxes or the distributors. He says there are small wineries that don't work through the distributors. EXHIBIT **(bus31a07)**

Mona Jamison, Wine Institute, said this bill is like killing a mosquito with a machete and a better proposal would be to find a way to deal with wine over the internet, rather than trying to stop it. She said if the problem is loss of tax revenue, then a bill should be introduced to capture the taxes over the internet. She also stated that the fines were extremely excessive, and you wouldn't know who to put the fines on. EXHIBIT **(bus31a08)** EXHIBIT **(bus31a09)**

David Scrimm, Representing himself, is strongly opposed to this bill. He likes a wide variety of wine and the internet allows him to taste a wide variety in a way that Montana liquor stores don't. EXHIBIT **(bus31a10)**

Mary Arnold, Representing herself, said this bill does not clearly address the problems it proposes to solve.

Questions from Committee Members and Responses:

SENATOR DALE BERRY asked where we would be if this bill were tabled.

Mona Jamison answered it would depend on what you view as the problem. The use of the internet is unclear under current Montana law.

SENATOR ED BUTCHER questioned how that could be done since the federal government prohibits any taxation of internet commerce. **Mona Jamison** said she thinks it is a different issue here.

Tom Ebzery said they could capture it through a license fee.

CHAIRMAN MIKE TAYLOR asked about the amounts of the fines and the defining of the person as a felon.

Kristi Blazer said it was to make it something people really don't want to do.

Neil Peterson said the idea was to make the fine large enough to make it worth while to go out of state to enforce this.

CHAIRMAN TAYLOR asked what he would base his jurisdiction on going out of state.

Neil Peterson said it would be based on the 21st Amendment Enforcement Act.

CHAIRMAN TAYLOR asked if they would go after the owner of the winery.

Neil Peterson said it would be the person in the business of selling wine to the other state.

CHAIRMAN TAYLOR asked if he would put the president of the winery in jail.

Neil Peterson said it would be the person who makes the decision to violate Montana law.

SENATOR VICKI COCCHIARELLA asked why there was a mandatory minimum prison sentence.

Neil Peterson said they were looking at the severity of the fourth offense.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 28.1}

SENATOR MIKE SPRAGUE, SD 6, BILLINGS, closed without comment.

HEARING ON SB 298

Sponsor: **SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY**

Proponents: **Carl Schweitzer, Subcontractors Association**
Zack Pallister, Big Sky Plumbing and Heating
Lynn Perkins, Fire Supression Systems
Dennis Iverson, Electrical Contractors Association

Opponents: **Robert Throssell, Montana Technical council**
Joe Hansen, Edsall Construction

Informational Witness: **Russ Katherman, Dept of Administration**

Opening Statement by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 6.9}

SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY, said this bill deals with the retainage on a construction project, which is that amount of money held by the owner to see that performance happens on a job. This bill says that the retainage is the property of the contractor or subcontractor and they ought to be compensated for somebody else using their money. It also changes the percentage amount you can withhold from 10% to 5%.

Proponents' Testimony:

Carl Schweitzer, Subcontractors Association, said when a subcontractor does the job he submits the bill to the owner or general contractor and gets paid 90% of what is owed. He stated that the other 10% should be put into an interest bearing account.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2-7-2001
BILL NO. SB 48

Amendments to Senate Bill No. 48
1st Reading Copy

For the Senate Business and Labor Committee

Prepared by Lee Heiman
February 6, 2001 (4:14PM)

1. Title, line 5.
Following: the second "ACT"
Strike: "PROHIBITING"
Insert: "CLARIFYING THAT ALL ALCOHOLIC BEVERAGES TO BE SOLD TO CONSUMERS IN MONTANA MUST BE DISTRIBUTED ACCORDING TO THE MONTANA ALCOHOLIC BEVERAGE CODE; CLARIFYING THAT"

2. Title, page 1, line 6.
Strike: the first "TO"
Insert: "MAY NOT"
Strike: "BEER, WINE, OR HARD CIDER"
Following: "RESIDENTS;"
Strike: "AND"
Insert: "CLARIFYING THE MANNER IN WHICH BREWERIES PROVIDE BEER TO THE PUBLIC; ESTABLISHING AN OFFENSE OF ILLEGAL IMPORTATION OR DISTRIBUTION OF ALCOHOLIC BEVERAGES;"

3. Title, line 7.
Following: "SHIPMENTS"
Insert: "; AND AMENDING SECTIONS 16-1-101, 16-1-104, 16-3-101, 16-3-214, 16-6-301, AND 16-6-302, MCA"

4. Page 1, line 11 through page 2, line 8.
Strike: Everything after the enacting clause
Insert: **"Section 1.** Section 16-1-101 , MCA, is amended to read:

"16-1-101. Citation -- declaration of policy -- subject matters of regulation. (1) Chapters 1 through 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, <u>importation,</u> and distribution of alcoholic beverages within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace,

morals, and safety of the people of the state, ~~and its provisions shall be construed for the accomplishment of such purposes~~ and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The provisions of this code must be broadly construed to accomplish these purposes."

{*Internal References to 16-1-101: None.*}"

Insert: "Section 2. Section 16-1-104 , MCA, is amended to read:

"16-1-104. Intent and construction of code. (1) The purpose and intent of this code are to:

(a) establish a state licensing system to control the transportation and importation of alcoholic beverages into Montana and the manufacture, sale, transportation, and distribution of alcoholic beverages within the state of Montana; and

(b) prohibit transactions in alcoholic beverages ~~which take place wholly~~ within the state of Montana except under state control as specifically provided by this code~~, and every~~.

(2) Every section and provision of this code ~~shall~~ must be construed ~~accordingly~~ according to subsection (1). ~~The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state.~~"

{*Internal References to 16-1-104: None.*}"

Insert: "Section 3. Section 16-3-101 , MCA, is amended to read:

"16-3-101. Alcoholic ~~beverages dispensed~~ beverage transactions -- only in accordance with code. (1) ~~No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give~~ A person who manufactures, imports, distributes, or sells alcoholic beverages or the persons's agent may not give or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance with the ~~rules made under~~ provisions of this code.

(2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state who does not hold a valid wholesaler's license issued by the department; or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes

alcoholic beverages ordered or purchased by telephone, computer, or other device.

(3) Except as otherwise provided by this code, alcoholic beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer."

{*Internal References to 16-3-101: None.*}"

Insert: "Section 4. Section 16-3-214 , MCA, is amended to read:

"16-3-214. Beer sales by brewers -- sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler; or

(ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) a brewery may not use a common carrier for delivery of the brewery's product to the public.

~~(2)~~(3) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

~~(3)~~(4) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

{*Internal References to 16-3-214:*
16-3-230x }"

Insert: "Section 5. Section 16-6-301 , MCA, is amended to read:

"16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful. (1) Except as provided by this code, a person or the person's agents or employees may not:

(a) expose or keep an alcoholic beverage for sale;

(b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or

(c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This ~~section~~ code does not prohibit:

(a) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

(d) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; or

(e) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

{*Internal References to 16-6-301: None.*}"

Insert: "Section 6. Section 16-6-302 , MCA, is amended to read:

"16-6-302. ~~Penalty for sale~~ Sale of alcoholic beverage without license -- sale or importation in violation of code -- penalty. (1) ~~Any~~ A person who has not been issued a license under this code who sells or keeps for sale in Montana any alcoholic beverage ~~is guilty of a felony~~ commits a criminal offense and upon conviction ~~thereof~~ is punishable by a fine of not less than $1,000 or more than $5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both ~~such~~ the fine and imprisonment.

(2) A person in the business of selling alcoholic beverages in another state or country who imports or distributes alcoholic beverages in violation of this code commits a criminal offense.

(3) A person convicted under subsection (2):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist any shipments of alcoholic beverages to Montana residents;

(b) for a second offense, shall be fined an amount not less than $25,000 or more than $50,000;

(c) for a third offense, shall be fined an amount not less than $50,000 or more than $100,000; and

(d) for a fourth or subsequent offense shall be fined an amount not less than $100,000 or be imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both."

{*Internal References to 16-6-302: None.*}"

- END -

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2-7-2001
BILL NO. SB 48

Senate Bill 48

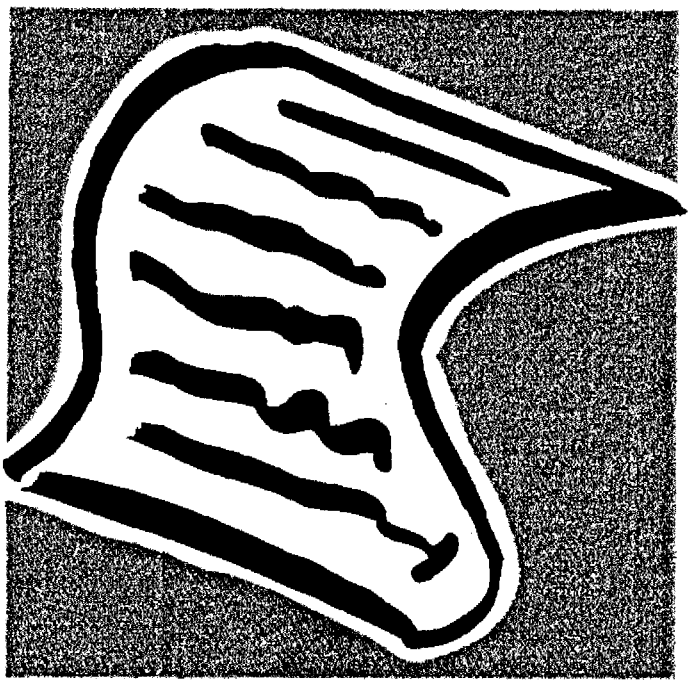
MCA 16-1-101

- Policy of the State of Montana to ensure entire control of the manufacture, sale, and distribution of alcohol within the state

- Subject to the Authority of the State of Montana through the Department of Revenue

- Exercise of the police powers of the state to protect the welfare, health, peace, morals, and safety of the people of the state

21st Amendment Enforcement Act



•Empowers state law enforcement officials to seek federal court injunction against businesses that illegally ship alcohol, ignoring laws which encourage underage access prevention, tax payments and responsible marketing

•This measure was passed in both the House and the Senate by substantial margins

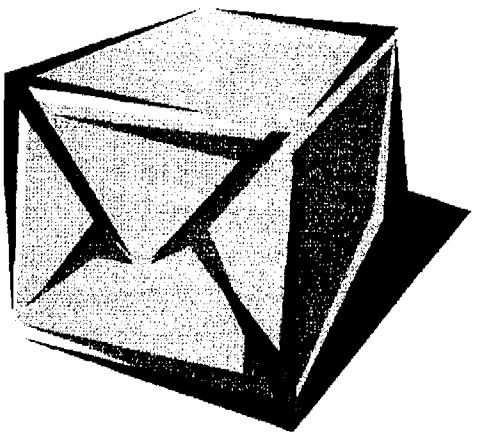
•This measure has been signed by President Clinton

State License System

Why Do We Need SB48?

- Internet Sales
- Ambiguity in Certain Areas in Code
  - Three Gallon Exception
  - Exception for Breweries that Manufacture Less than 60,000 Barrels
- No Penalty Provisions

Is This a Real Problem?



- Estimated 1.9 Billion in sales of alcohol over the Internet by 2005

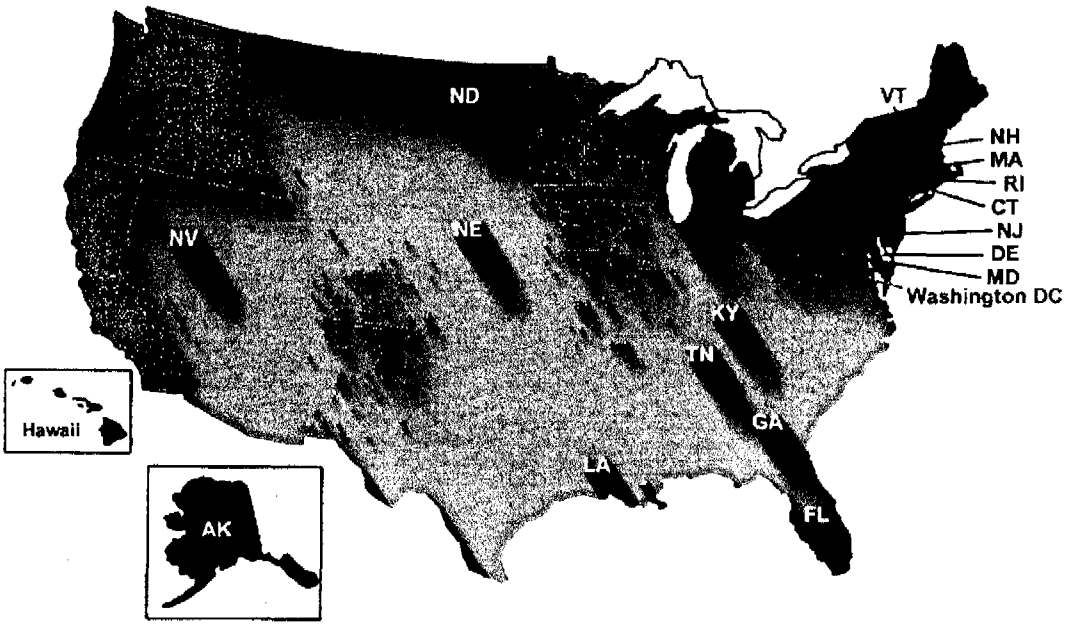
- Increased Access to Alcohol for Underage Montanans

- Loss of Tax Revenue

Direct Shipment Laws by State for Wineries

(As of September, 1999)

Contact: Wine Institute
(415) 512-0151



Reciprocity states (12) :

California
Colorado
Idaho
Illinois
Iowa
Minnesota
Missouri
New Mexico
Oregon
Washington
Wisconsin
West Virginia

Limited direct shipping & permit states (5) :

Louisiana (permit required - taxes paid)
Nebraska
Nevada (taxes paid - permit over 2,000 cases)
New Hampshire (permit required - taxes paid)
North Dakota

Attorneys general interpretation or regulatory allowance of limited shipments (4) :

Alaska (a reasonable amount)
Connecticut (consumer must get permit)
Rhode Island (consumer must get permit)
Washington D.C. (one gallon per person)

Felony for wineries or retailers to direct ship (5) :

Florida
Georgia
Kentucky
Maryland
Tennessee

Felony for non-basic permit holders to direct ship (2) :

Indiana
North Carolina

Direct shipments via common carrier prohibited (23) :

Alabama
Arizona
Arkansas
Delaware
Hawaii
Kansas
Maine
Massachusetts
Michigan
Mississippi
Montana
New Jersey
New York
Ohio
Oklahoma
Pennsylvania
South Carolina
South Dakota
Texas
Utah
Vermont
Virginia
Wyoming

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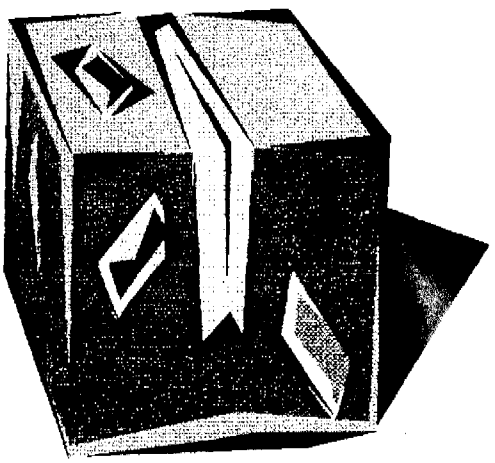
Areas of Concern from Other States that Have Allowed Direct Shipments of Alcohol

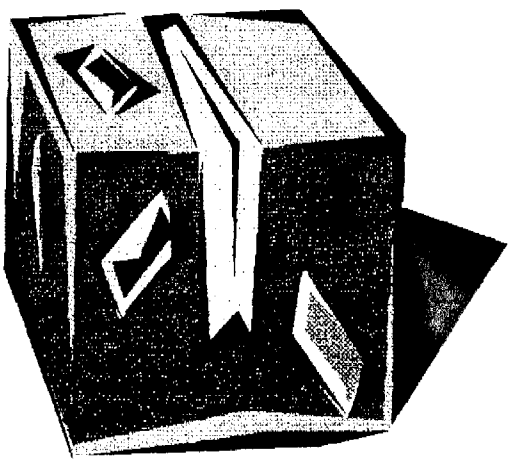
- States Contacted
  - Louisiana
  - North Dakota
  - Nebraska
  - New Hampshire
  - Nevada
  - Oregon
  - Washington
  - Idaho

- Reliance on Voluntary Compliance
- No real knowledge of the volume
- Enforcement of Licensing and Shipment
- Under Age Receipt of Alcohol
- Identification of Legal Shipment of Alcohol versus Illegal
- Lack of Penalty Provisions

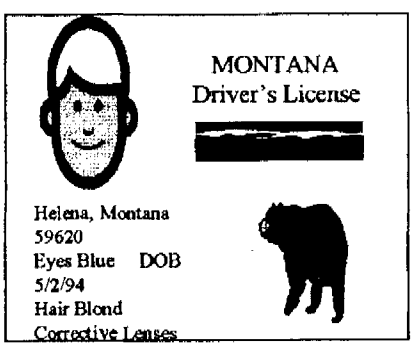
Limited Purchases Over the Internet?

Identify a Legal Shipment from an Illegal Shipment?





Rely on Common Carriers to Check IDs?



SB48 Section by Section Summary

- **First Section** clarifies that the state of Montana controls the sale of alcohol under the 21st amendment

- **Second Section** clarifies the intent of the Montana Alcohol Beverage Code, which establishes a state-wide licensing system that controls the flow of alcohol within the state

- **Third Section** states a manufacturer, importer, distributor, or seller of alcohol may not give or sell alcohol to anyone unless allowed by the code

- **Fourth Section** clarifies what Montana breweries can do under the code

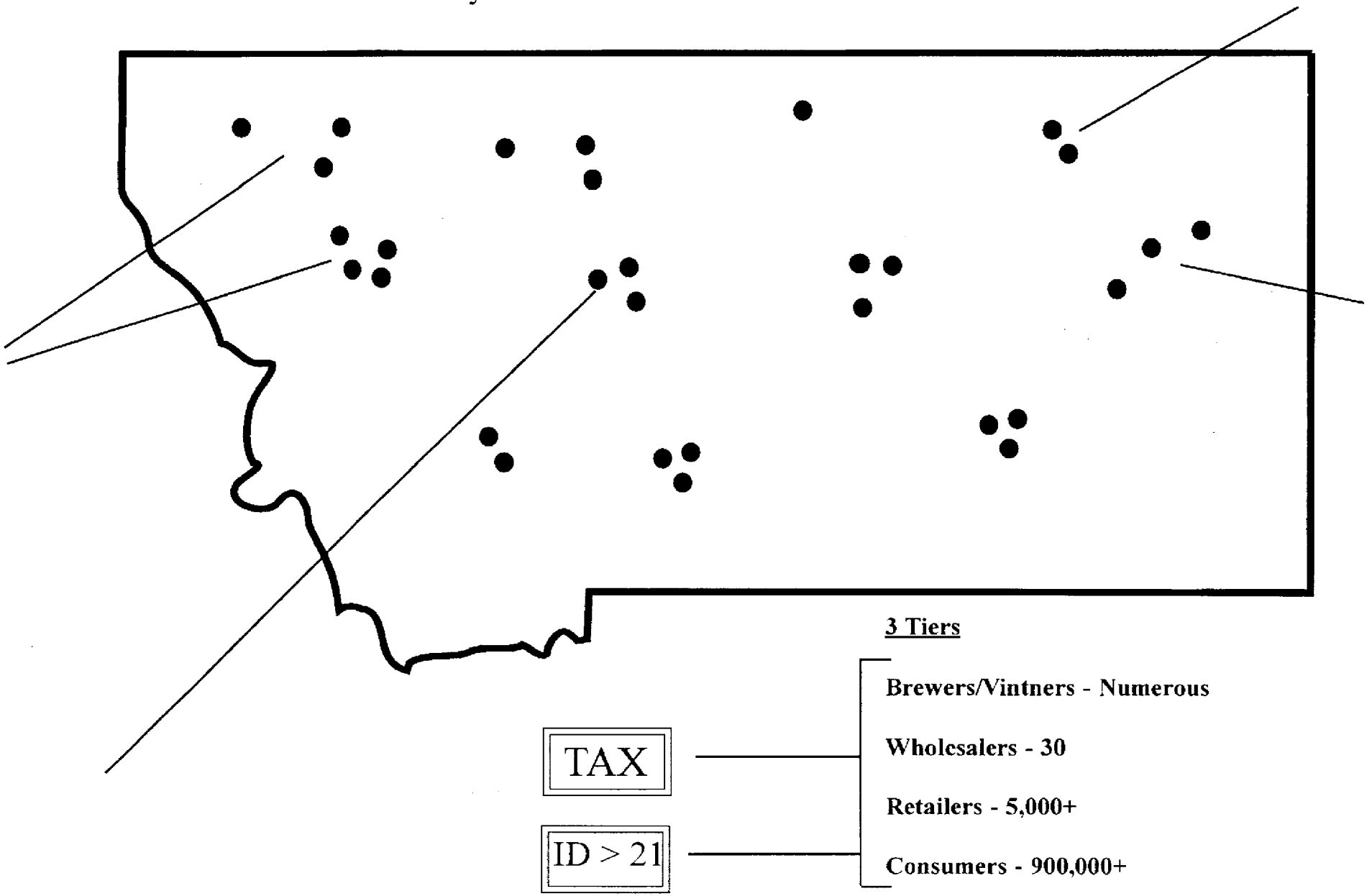
- **Fifth Section** clarifies that a person can bring a limited amount of alcohol into the state, provided the alcohol is in their physical possession

- **Six Section** establishes penalty provisions for violations of this code
  - 1st violation - warning letter
  - 2nd violation - fine of $25,000 - $50,000
  - 3rd violation - fine of $50,000 - $100,000
  - 4th violation - fine greater $100,000 and/or imprisonment

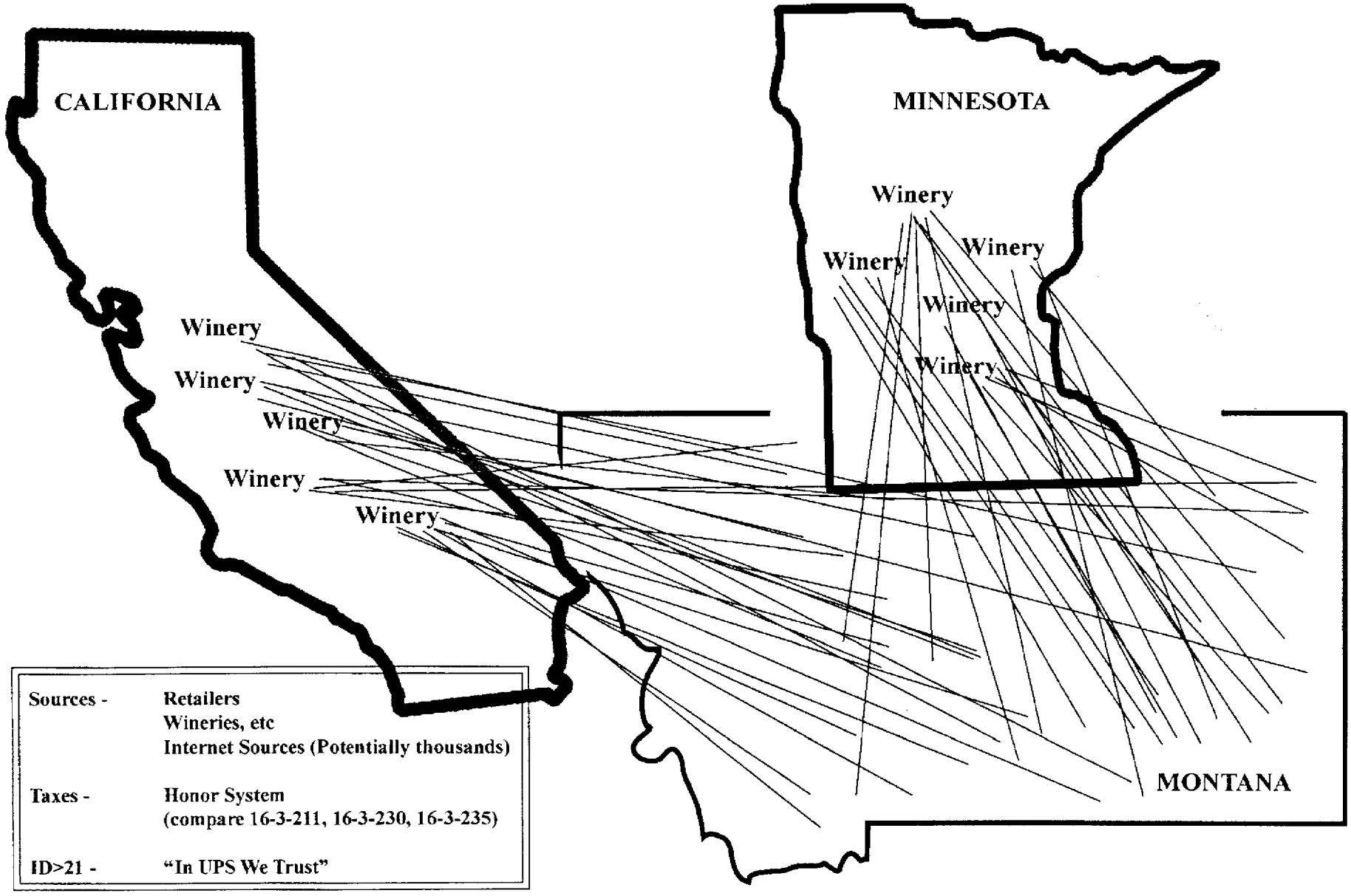
SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 2-7-2001
BILL NO. SB48

THE LICENSED 3-TIER SYSTEM

The In-State 2-Tier System - State Still Controls Under 21st Amendment



OUT-OF-STATE DIRECT TO CONSUMER



Sources -	Retailers Wineries, etc Internet Sources (Potentially thousands)
Taxes -	Honor System (compare 16-3-211, 16-3-230, 16-3-235)
ID>21 -	"In UPS We Trust"

The following exhibit
exceeds 10 pages.

Exhibit: 4
Date 2.7.01
Bill: 48

The complete exhibit is located with the minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena, Mt 59620-1202
(406) 444-4775

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 2-7-2001
BILL NO. SB48

STATE OF MONTANA
DEPARTMENT OF REVENUE
CUSTOMER SERVICE CENTER
REGISTRATION AND LIQUOR LICENSING

2000-2001 LICENSE

LICENSE NO. 96-999-9676-107

$400.00

SANDY MAC'S DISTRIBUTING
2727 AIRPORT ROAD
HELENA MT 59601

OWNED BY:
MACDONALD, SANDY, KAREN & TREVOR
TEN COM

Permission is hereby granted to the above named licensee to sell BEER AT WHOLESALE at the Premises designated above in accordance with the Montana laws and rules of the Department of Revenue.
This license is a privilege personal to the licensee and is subject to suspension or revocation for cause. No transfer hereof as to either person or location is valid until approved and endorsed upon the face hereof by said Department.

LICENSE MUST BE PROMINENTLY DISPLAYED IN LICENSED PREMISES

VALID THROUGH JUNE 30,
2001

Montana Department of Revenue
Helena, Montana

Neil Peterson

Administrator,
Customer Service Center

STATE OF MONTANA
DEPARTMENT OF REVENUE
CUSTOMER SERVICE CENTER
REGISTRATION AND LIQUOR LICENSING

2000-2001 LICENSE

LICENSE NO. 05-601-3941-001

$800.00

MONTANA NUGGET CASINO
612 EUCLID AVE.
HELENA MT 59601

OWNED BY:
G. N. C. INC.

SECURED PARTY(IES):
SMALL BUSINESS ADMINISTRATION 1ST
SMALL BUSINESS ADMINISTRATION

LEGAL DESCRIPTION OF LICENSED PREMISES:
LOTS 20-25 BLK 39 BROADWATER 1ST ADD

SPECIAL RESTRICTIONS:
RENEWAL OF THIS LICENSE IS SUBJECT TO THE RESOLUTION OF THE PENDING REVOCATION ACTION

Permission is hereby granted to the above named licensee to sell ALL ALCOHOLIC BEVERAGES at the Premises designated above in accordance with the Montana laws and rules of the Department of Revenue.
This license is a privilege personal to the licensee and is subject to suspension or revocation for cause. No transfer hereof as to either person or location is valid until approved and endorsed upon the face hereof by said Department.

LICENSE MUST BE PROMINENTLY DISPLAYED IN LICENSED PREMISES

VALID THROUGH JUNE 30,
2001

Montana Department of Revenue
Helena, Montana

Neil Peterson

Administrator,
Customer Service Center

CLICK IMPORTS

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 2-7-2001
BILL NO. SB 48

Eureka Liquor Store

Thursday, October 5, 2000

can we get this?

Mrs. Ella J. Adams
P.O Box 954
Eureka, MT 59917

Dear Mrs. Adams,

I am extremely sorry to inform you that Click Imports can no longer ship wine to your state. Since our last shipment to you, a law was passed that regulated the shipment of wine to consumers in a number of states including Montana. To summarize, it is illegal for us as an importer to send you, the consumer or non-retailer, any type of alcoholic beverage. In this case we cannot send you the six bottles of Fat bastard wine you requested.

This unfortunate turns of events leaves me with no choice but to refer you to outside retailers. One is here in Seattle: it is called Seattle Cellars, contact person Dave Woods. His phone number is (206) 256-0850. The other is in Chicago; it is Sam's Wine and Liquor, contact person Tracy Lewis. Her phone number is (312) 664-4394. Hopefully they will be able to aid you in purchasing Fat Bastard wine. The price will stay the same with the exception of one or two dollars.

I have enclosed your check for $66.00 uncashed. Again I apologize for this inconvenience and hope the above people can help you.

Sincerely,

Abby Brooks
Click Imports

Enclosures

CLICK IMPORTS STOP SHIPPING TO THIS PERSON
WE (AS OF 1/25/01 NW REPRESENT
CLICK IMPORTS

THIS PARTICULAR WINE COST THIS PERSON
66.99 ÷ 6 BOTTLES = 11.00 BTL AVERAGE

WE SELL WHOLESALE TO EUREKA LIQUOR
AT 7.49 THE MARK UP 25% AND
SELL FOR 9.99

2228-B First Avenue • Seattle, WA 98121 TOLL FREE 800.859.0689 FAX 206.443.2535 URL www.clickimports.com

2/6/01

To: Senator Mike Taylor and rest of the members of the Senate Business and Labor committee

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 2-7-2001
BILL NO. SB 48

Dear committee member,

As a 5th generation Montanan, I am writing this letter to ask for your help by voting NO on Senate Bill 48. This is a bad bill that does NOT serve the best interest of the general public of Montana and WILL in fact make FELONS of hundreds of us wine lovers within the State of Montana. As a wine lover and collector, I have been very fortunate to be able to use the 3 gallon personal limit law, to travel across North America tasting and purchasing small quantities of wine for my own consumption. These wines are NOT available through ANY distributor because they are small producing wineries that do not produce enough wine to be distributed through a mass network.

My wife and I also attend several wine auction benefits each year throughout the U.S. and have been able to carry home the wine we have purchased. These auction items are wines that CANNOT be obtained anywhere else and there is no provision in the Montana law to allow us to ship this wine to a distributor (they cannot sell direct to the public) and these is no provision to even pay the tax on this wine to the Department of Revenue (they can only receive tax from a distributor). This law will make us both felons if passed. The wine industry around the world is growing by several hundred new wineries each year (last year Walla Walla Washington introduced 12 small world class wineries). These are ONLY attainable by either hand purchase at the winery, or by purchase and direct shipment. The distributors in Montana CANNOT supply me with these wines, and there is NO OTHER method available for tasting and purchase of these wines.

The Montana Department of Revenue claims to be losing revenue because of the existing laws, but if this bill is passed, the Department of Revenue will STILL be unable to acquire revenue because the wine is simply unavailable through the distributors and current laws in the State of Montana. This law will take from law abiding Montana citizens the opportunity to taste and purchase wines other than the small select wines available through the distributors. If the Department of Revenue believes that the citizens of Montana are simply buying wines and having them shipped direct to save them money, nothing could be further from the truth. I have been to at least 100 wineries that produce wine currently distributed in Montana and NONE of these wineries will sell their wine direct for the same cost. In fact, I can go down the street to Osco Drug and purchase wines at 25% less than I can purchase direct at the winery.

If the Department of Revenue and the Montana Legislature wish to invoke a new law for revenue, open up the importation and allow the consumer to pay a tax through some claim form. I would gladly pay a tax on wine for the privilege of bringing wine into the state, that I am unable to obtain otherwise.

The current Montana law could not have taken into account the growing number of small wineries, the ease of travel by which we may find and acquire these wines, or the convenience of having them shipped direct to us. If this bill passes, your constituents will be forced by law to purchase only the wines available through the small, monopolized network of distributors in Montana. I relate this proposed bill to restricting me from buying a car, not available in Montana, from an out of state dealer, or restricting me to the limited line of clothing available through the local department stores. Montana has always been a year or so behind the rest of the nation in state of the art availability, but this bill will set Montana back a hundred years if this passes.

In the past I have been given wine as a gift while traveling abroad, this new law would make me a FELON for accepting this gift and returning home to Montana with me. I would no longer be able to stop and purchase a 6-pack of micro-brewed beer in Idaho, as a gift to a friend, without becoming a FELON. I don't think Tedd Turner or any other Montana celebrity will be very pleased to become a FELON based upon their transportation of their wine from California to their home in Montana.

I have dear friend in Malta who was originally from California. Due to her age and low income, she cannot travel outside the Malta area anymore. She has always had a great love and passion for fine wine. How tragic it will be that she will no longer be able to taste a new, unique, hard to acquire wine, because of the greedy powerful wine distributors in Montana and the Department of Revenue. If I were to bring her a bottle of wine from out of state, I would become a FELON.

I have loved this State of Montana more than anyone and I would hate to leave, but if this law would turn me into a " convicted felon" because of my love for finewine, I would certainly have a difficult decision to make. This wine issue is only going to get worse as more people travel and have the opportunity to taste the new and distinctly different wines available outside this state. I agree that the liquor laws are outdated, but this bill will simply set them deeper in stone and make a lot of us FELONS. Please vote AGAINST this bill. Thank You for your time.

Sincerely,

Timothy W. King
720 Revolution Ave.
Billings, MT 59105
406-252-2949

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 2-7-2001
BILL NO. SB 43

HB0132 - Direct shipment of wine-2.

2001

STATE OF WYOMING

01LSO-0250.E1

ENGROSSED

HOUSE BILL NO. HB0132

Direct shipment of wine-2.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to alcoholic beverages; providing for
2 direct shipments of wine to consumers or licensed retailers
3 by out-of-state shippers; specifying licensing requirements
4 and other conditions on shipments; prohibiting unauthorized
5 shipments of alcohol; providing for fees and penalties;
6 making conforming amendments; providing a definition; and
7 providing for an effective date.
8
9 *Be It Enacted by the Legislature of the State of Wyoming:*
10
11 **Section 1.** W.S. 12-2-204 is created to read:
12
13 **12-2-204. Out-of-state shipment of manufactured wine;**
14 **license; fees; restrictions; conditions.**
15
16 (a) Notwithstanding any law, rule or regulation to
17 the contrary, any person currently licensed in its state of

1 domicile as an alcoholic liquor or malt beverage
2 manufacturer, importer, wholesaler or retailer who obtains
3 an out-of-state shipper's license, as provided in this
4 section, may ship no more than a total of eighteen (18)
5 liters of manufactured wine directly to any one (1)
6 household in this state in any twelve (12) month period.
7
8 (b) Notwithstanding any law, rule or regulation to
9 the contrary, any person currently licensed in its state of
10 domicile as an alcoholic liquor or malt beverage
11 manufacturer, importer, wholesaler or retailer who obtains
12 an out-of-state shipper's license, as provided in this

13 section, may ship to any Wyoming retail establishment which
14 holds a liquor license in this state any manufactured wine
15 which is not listed with the liquor division as part of its
16 inventory and distribution operation.
17
18 (c) Before sending any shipment to a household or to
19 a licensed retailer in this state, the out-of-state shipper
20 shall:
21
22 (i) File an application with the liquor division
23 of the department of revenue;
24

Page 2

1 (ii) Pay a license fee of fifty dollars ($50.00)
2 to the liquor division;
3
4 (iii) Provide a true copy of its current
5 alcoholic liquor or malt beverage license issued in its
6 state of domicile to the liquor division;
7
8 (iv) Provide such other information as may be
9 required by the liquor division; and
10
11 (v) Obtain from the liquor division an out-of-
12 state shipper's license, after the division conducts such
13 investigation as it deems necessary.
14
15 (d) Any out-of-state shippers licensed pursuant to
16 this section shall:
17
18 (i) Not ship more than a total of eighteen (18)
19 liters of manufactured wine to any one (1) household in
20 this state during any twelve (12) month period. In the
21 event any out-of-state shipper ships more than ninety (90)
22 liters of any particular manufactured wine to any
23 combination of households or licensed retailers in this
24 state, the out-of-state shipper shall offer to sell the

Page 3

1 manufactured wine to the liquor division at wholesale
2 prices;
3
4 (ii) Ship manufactured wine only to an
5 individual who is at least twenty-one (21) years of age for
6 such individual's personal use and not for resale. No out-
7 of-state shipper shall ship any malt beverage or spirituous
8 liquor to any person in this state. No out-of-state shipper

9 shall ship any malt beverage or spirituous liquor to any
10 retail establishment which holds a liquor license in this
11 state;
12
13 (iii) Ensure that all shipping containers of
14 manufactured wine shipped pursuant to this section are
15 conspicuously labeled with the words: "CONTAINS ALCOHOLIC
16 BEVERAGES. ADULT (OVER 21) SIGNATURE REQUIRED FOR
17 DELIVERY";
18
19 (iv) Ensure that all shipments into this state
20 are made by a duly licensed carrier and further ensure that
21 such carriers comply with the requirement to obtain an
22 adult signature;
23

Page 4

1 (v) Remit a tax of twelve percent (12%) of the
2 retail price for each shipment of manufactured wine to the
3 liquor division. Each out-of-state shipper shall file a
4 monthly report with the liquor division and include a copy
5 of the invoice for each shipment of manufactured wine and
6 remit any tax due. The report shall be filed with the
7 liquor division not later than the tenth of the month
8 following the month in which the shipment was made. Any
9 report filed late with the liquor division shall be subject
10 to a late filing fee of twenty-five dollars ($25.00);
11
12 (vi) Maintain records for at least three (3)
13 years as will permit the liquor division to ascertain the
14 truthfulness of the information filed and permit the
15 division to perform an audit of the licensee's records upon
16 reasonable request; and
17
18 (vii) Be deemed to have consented to the
19 personal jurisdiction of the liquor division or any other
20 state agency and the courts of this state concerning
21 enforcement of this section and any related laws, rules or
22 regulations.
23

Page 5

1 (e) The out-of-state shipper shall annually renew its
2 license with the liquor division by paying a renewal fee of
3 fifty dollars ($50.00), providing a true copy of its
4 current alcoholic liquor or malt beverage license issued in
5 its state of domicile, and further providing other
6 information as may be required.

7
8 (f) Any person who makes, participates in,
9 transports, imports or receives a shipment in violation of
10 this section is guilty of a misdemeanor. Each shipment
11 shall constitute a separate offense. Where the person holds
12 an out-of-state shipper's license, license suspension or
13 revocation may be in addition to or in lieu of the
14 foregoing penalties.
15
16 **Section 2.** W.S. 12-1-101(a) by creating a new
17 paragraph (xxv), 12-2-301(a) and 12-3-101(d) are amended to
18 read:
19
20 **12-1-101. Definitions.**
21
22 (a) As used in this title:
23

Page 6

1 (xxv) "Out-of-state shipper" means any licensee
2 outside this state who accepts orders for manufactured wine
3 placed from this state and who ships, packages for shipment
4 or facilitates in any way shipment of the wine by a third
5 party or common carrier to any person, household or
6 licensed retailer in this state.
7
8 **12-2-301. Generally.**
9
10 (a) The commission is the exclusive wholesale
11 distributor and seller of alcoholic liquor within Wyoming.
12 It is granted the sole right to sell alcoholic liquors at
13 wholesale, and no licensee or permittee who is granted the
14 right to sell, distribute or receive alcoholic liquors at
15 retail shall purchase any alcoholic liquors from any source
16 other than the commission, unless otherwise expressly
17 authorized by state law. Any out-of-state shipment of
18 alcoholic liquor or malt beverage into this state is
19 prohibited unless otherwise expressly authorized by state
20 law.
21
22 **12-3-101. Excise tax to be paid; limitation on liquor**
23 **or malt beverage importation; penalties.**
24

Page 7

1 (d) No person shall, without authorization from the
2 commission or by law, ~~import or~~ personally transport
3 alcoholic liquor or malt beverages into Wyoming for sale,

4 use or consumption in the state when the applicable state
5 excise tax has not been paid. No person shall import or
6 transport at any given time more than three (3) liters of
7 alcoholic liquor or five (5) gallons of malt beverage for
8 the personal use of the possessor into Wyoming if the
9 applicable state ~~excise tax has~~ taxes have not been paid.
10 This subsection shall not apply to a person importing
11 manufactured wine in accordance with the provisions of W.S.
12 12-2-204.
13
14 **Section 3.** This act is effective July 1, 2001.
15
16 (END)

State of Montana

Marc Racicot, Governor

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE 2-7-2001
BILL NO. SB48
96-08

Department of Revenue
Mick Robinson, Director

P.O. Box 202701
Helena, Montana 59620-2701

David W. Woodgerd, Chief Legal Counsel
(406) 444-2460

September 4 1996

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To Mona Jamison	From Syd Williams
Co.	Co.
Dept.	Phone #
Fax # 406-443-1948	Fax #

Tom K. Hopgood
Attorney at Law
PO Box 1144
Helena, MT 59624

Dear Mr. Hopgood:

The Office of Legal Affairs of the Department of Revenue has again reviewed §16-6-301(2), MCA, as it may apply to individuals that order alcoholic beverages from out-of-state suppliers and shippers who may transport such beverages to Montana consumers.

Section 16-6-301(2), MCA, does not prevent Montana consumers from ordering alcoholic beverages from out-of-state suppliers. Further, nothing in that section prohibits out-of-state suppliers from shipping alcoholic beverages to consumers in Montana. The statute does not prohibit "any" person from bringing up to three wine gallons of alcoholic beverages into Montana.

A common carrier, who brings the product into Montana, enters the state merely acting on behalf of the consumer, doing something the consumer could have done him/herself. The products are brought into Montana at the request, and for the benefit, of Montana consumers. In the cases of which we are aware, the alcoholic beverages are purchased by the Montana consumer from out-of-state sources and then they are shipped via some carrier such as United Parcel Service or Federal Express to the consumer in Montana. From the time the seller ships the goods to the time they arrive at the consumer, the consumer pays the shipping and bears the risk of loss. At all times subsequent to the consumer's order, all activities are done for the benefit of the consumer. The participation of the carrier in these cases is no different than if the consumer had physically purchased the beverages out-of-state and then shipped them back to Montana via the carrier instead of carrying them back him/herself.

In sum, it is the position of the Department that §16-6-301(2), MCA, does not prohibit the importation of up to three gallons of alcoholic beverages into the state by Montana

consumers when common carriers such as UPS are used. The carrier is merely the manner by which the Montana consumer is shipping product he/she owns back to Montana.

Sincerely,

DAVID W. WOODGERD

/nls

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10
DATE 2-7-2001
BILL NO. SB 49

In bill text, brackets have special meaning:

[A> <A] contains added text, and

[D> <D] contains deleted text.

North Dakota 56th Legislative Assembly

1999 ND S 2216

Enacted

19990401

Thompson

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2216

Senators Thompson, T. Mathern

Representatives Delmore, Rose, Thorpe, Stefonowicz

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to the shipment of alcoholic beverages; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Direct sale from out-of-state seller to consumer - Penalty.

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.

2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.

3. For a first violation of subsection 1 or 2, the state treasurer shall

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE 2-7-2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY	✓		
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG			
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN		✓	
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

DATE 2-7-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB48, SB298, HB138

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Timothy W. King	252-2949	MYSELF	SB48		X
Neil Peterson	444-1941	DOR	SB48	X	
Lynn Perkins	586-9510	FSSI	SB298	X	
Kristi Blazer	442-7450	MT Beer & Wine Wholesalers Assn	SB48	X	
Brian Clark	752-1455	Fun Beverage, Inc.	SB48	X	
Greg Carter	543-6634	Vehrs Wine Inc	SB48	X	
Mike Parker	452-1839	Pennington, Inc	SB48	X	
KURT WINEGARDNER	582-8739	WINEGARDNERS WINES	SB48	X	
Carter Mollgaard	222-0390	M&C Beverage	SB48	X	
Dale Markovich	494-3793	Roach & Smith Distr. Inc	SB48	X	
DAVE Hewitt	442-2675	Clausen Dist Co.	SB48	X	
JOHN DELANO	2-3410	Miller Beer	SB48		
Brian Smith	449-3005	MT BREWERS ASSOC.	SB48	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

go to Next Sheet →

DATE 2-7-2011

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB48, SB298, HB138

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
David Scriven	442-1554	Self	SB48		X
Mona Jamison	442-5581	WINE INS	SB48		X
Riley Johnson	443-3797	NFIB	SB48 HB138		
Kurt Alme	444-2462	DOR / Gov. Office		X	
Julie Millam	442-6[illegible]	MTCC		X	
Mary Arnold	449-2833	Self	SB48		X
Patrick M. Montalbo	873-2845	LSOA of MT.	SB48	X	
Aidan Myhre	442-6383	MT Chamber of Commerce	SB48	X	
Robert Zucconi	442-1142	Zeke's Dist. Co.	SB48	X	
Zach Pallister	3-0336	Bridgeway P&H	SB298	X	
Robert Throssell	442-0230	MT Technical Council	SB298		X
Dennis Iverson	442-1900	NATL. ELECT. CONTRACTORS ASSOC. (N.E.C.A)	298	X	
Bill Bentley	2-8330	NECA	298	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-7-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB48, SB298, HB138

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Russ Katherman	444-3332	D of A	298		
Carl Schweitzer	457-1324	ASAM	298	X	
Tom Ebzery	441-7531	Mt Contractors Assn.	298		X
Joe Hansen	587-0614	Edsall Const./MCA	298		X
Riley Johnson	443-3757	Check Into Cash, Inc	HB 138	X	
Chris Olson	444-2091	Dept of Commerce	HB 138	X	
Bernie Harrington	652-9199	MT Financial Service Ptrs	HB138	✓	

INFO 2

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 14, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 445, 2/13/2001
Executive Action: SB 48; SB 277; SB 151; SB118; SB 292; SB 340; SB 323

EXECUTIVE ACTION ON SB 48

Motion: **SEN. SPRAGUE** moved that **AMENDMENTS TO SB 48 BE ADOPTED.**

Discussion: **SENATOR SPRAGUE** said the amendments have a compromise on the penalty stage. He had suggestions on how to enforce it. **EXHIBIT(3) SENATOR MAHLUM** asked what would happen if someone brought in 3-4 bottles for their own use. **Neil Peterson** said it would be illegal, but there would be no way to enforce it. One of the changes in SB 48 is that you would have to have the wine in your possession, you couldn't ship it. **Chairman Taylor** asked **Bart Campbell** to explain the amendment. He said the changes are on page 5 where it changes the penalty. Now it would be a civil offense, 2nd offense to not exceed $5000., 3rd offense not to exceed $10,000, 4th offense not to exceed $25,000. In subsection 3 it says a person who is in the business of selling alcohol, not just people who are users.

Vote: **Motion carried unanimously.**

Motion/Vote: **SEN. BUTCHER** moved that **SB 48 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 277

Motion/Vote: **SEN. BUTCHER** moved that **SB 277 BE TABLED. Motion carried 5-4 with Cocchiarella, Mahlum, Roush, and Ryan voting no.**

EXECUTIVE ACTION ON SB 151

Motion/Vote: **SEN. ROUSH** moved that **AMENDMENTS TO SB 151 BE ADOPTED. Motion carried 8-1 with Mahlum voting no.**

Motion/Vote: **SEN. SPRAGUE** moved that **SB 151 DO PASS AS AMENDED. Motion carried 8-1 with Cocchiarella voting no.**

EXECUTIVE ACTION ON SB 118

Motion/Vote: **SEN. ROUSH** moved that **AMENDMENTS TO SB 118 BE ADOPTED. Motion carried unanimously.**

2

Amendments to Senate Bill No. 48
1st Reading Copy

For the Senate Business and Labor Committee

Prepared by Lee Heiman
February 14, 2001 (10:56AM)

1. Title, line 5.
Following: the second "ACT"
Strike: "PROHIBITING"
Insert: "CLARIFYING THAT ALL ALCOHOLIC BEVERAGES TO BE SOLD TO CONSUMERS IN MONTANA MUST BE DISTRIBUTED ACCORDING TO THE MONTANA ALCOHOLIC BEVERAGE CODE; CLARIFYING THAT"

2. Title, page 1, line 6.
Strike: the first "TO"
Insert: "MAY NOT"
Strike: "BEER, WINE, OR HARD CIDER"
Following: "RESIDENTS;"
Strike: "AND"
Insert: "CLARIFYING THE MANNER IN WHICH BREWERIES PROVIDE BEER TO THE PUBLIC; ESTABLISHING AN OFFENSE OF ILLEGAL IMPORTATION OR DISTRIBUTION OF ALCOHOLIC BEVERAGES;"

3. Title, line 7.
Following: "SHIPMENTS"
Insert: "; AND AMENDING SECTIONS 16-1-101, 16-1-104, 16-3-101, 16-3-214, 16-6-301, AND 16-6-302, MCA"

4. Page 1, line 11 through page 2, line 8.
Strike: Everything after the enacting clause
Insert: **"Section 1.** Section 16-1-101, MCA, is amended to read:

"16-1-101. Citation -- declaration of policy -- subject matters of regulation. (1) Chapters 1 through 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, <u>importation,</u> and distribution of alcoholic beverages within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state, ~~and its provisions~~

~~shall be construed for the accomplishment of such purposes~~ and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The provisions of this code must be broadly construed to accomplish these purposes."
{*Internal References to 16-1-101: None.*}"

Insert: "Section 2. Section 16-1-104, MCA, is amended to read:

"16-1-104. Intent and construction of code. (1) The purpose and intent of this code are to:

(a) establish a state licensing system to control the transportation and importation of alcoholic beverages into Montana and the manufacture, sale, transportation, and distribution of alcoholic beverages within the state of Montana; and

(b) prohibit transactions in alcoholic beverages ~~which take place wholly~~ within the state of Montana except under state control as specifically provided by this code~~, and every~~.

(2) Every section and provision of this code ~~shall~~ must be construed ~~accordingly~~ according to subsection (1). ~~The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state.~~"
{*Internal References to 16-1-104: None.*}"

Insert: "Section 3. Section 16-3-101, MCA, is amended to read:

"16-3-101. Alcoholic ~~beverages dispensed~~ beverage transactions -- only in accordance with code. (1) ~~No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give~~ A person who manufactures, imports, distributes, or sells alcoholic beverages or the persons's agent may not give or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance with the ~~rules made under~~ provisions of this code.

(2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state who does not hold a valid wholesaler's license issued by the department; or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by telephone, computer, or other device.

(3) Except as otherwise provided by this code, alcoholic

beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer."

{*Internal References to 16-3-101: None.*}"

Insert: "Section 4. Section 16-3-214, MCA, is amended to read:

"16-3-214. Beer sales by brewers -- sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler; or

(ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) a brewery may not use a common carrier for delivery of the brewery's product to the public.

~~(2)~~(3) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

~~(3)~~(4) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

{*Internal References to 16-3-214:*
16-3-230x }"

Insert: "Section 5. Section 16-6-301, MCA, is amended to read:

"16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful. (1) Except as provided by this code, a person or the person's agents or employees may not:

(a) expose or keep an alcoholic beverage for sale;

(b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or

(c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This ~~section~~ code does not prohibit:

(a) (i) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country; or

(ii) a person who has purchased an annual numbered permit from the department for $20 from ordering an amount not to exceed 3 gallons of alcoholic beverage from a source in another state provided that:

(A) the person in applying for the permit, on a form provided by the department, affirms under oath that the person is over 21 years of age;

(B) the person affirms under oath that the person agrees not to purchase more than 3 gallons of alcoholic beverage from sources in another state in any one calendar year; and

(C) the person or entity in the other state obtains the number of the person's permit from the person prior to shipping any alcoholic beverage to the person;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

(d) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; or

(e) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

{*Internal References to 16-6-301: None.*}"

Insert: "Section 6. Section 16-6-302, MCA, is amended to read:

"16-6-302. ~~Penalty for sale~~ Sale of alcoholic beverage

without license -- sale or importation in violation of code -- penalty. (1) ~~Any~~ A person who has not been issued a license under this code who sells or keeps for sale in Montana any alcoholic beverage ~~is guilty of a felony~~ commits a criminal offense and upon conviction ~~thereof~~ is punishable by a fine of not less than $1,000 or more than $5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both ~~such~~ the fine and imprisonment.

(2) A person in the business of selling alcoholic beverages in another state or country who imports or distributes alcoholic beverages in violation of this code commits a criminal offense.

(3) A person convicted under subsection (2):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist any shipments of alcoholic beverages to Montana residents;

(b) for a second offense, shall be fined an amount not less than $1,000 or more than $3,000;

(c) for a third offense, shall be fined an amount not less than $3,000 or more than $5,000; and

(d) for a fourth or subsequent offense shall be fined an amount not less than $10,000 or more than $15,000."

{*Internal References to 16-6-302: None.*}"

- END -

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE 2-14-2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY	✓		
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

1

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 2-14-2001 BILL NO. SB48 NUMBER 1

MOTION: Sen Sprague moves Amendments

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

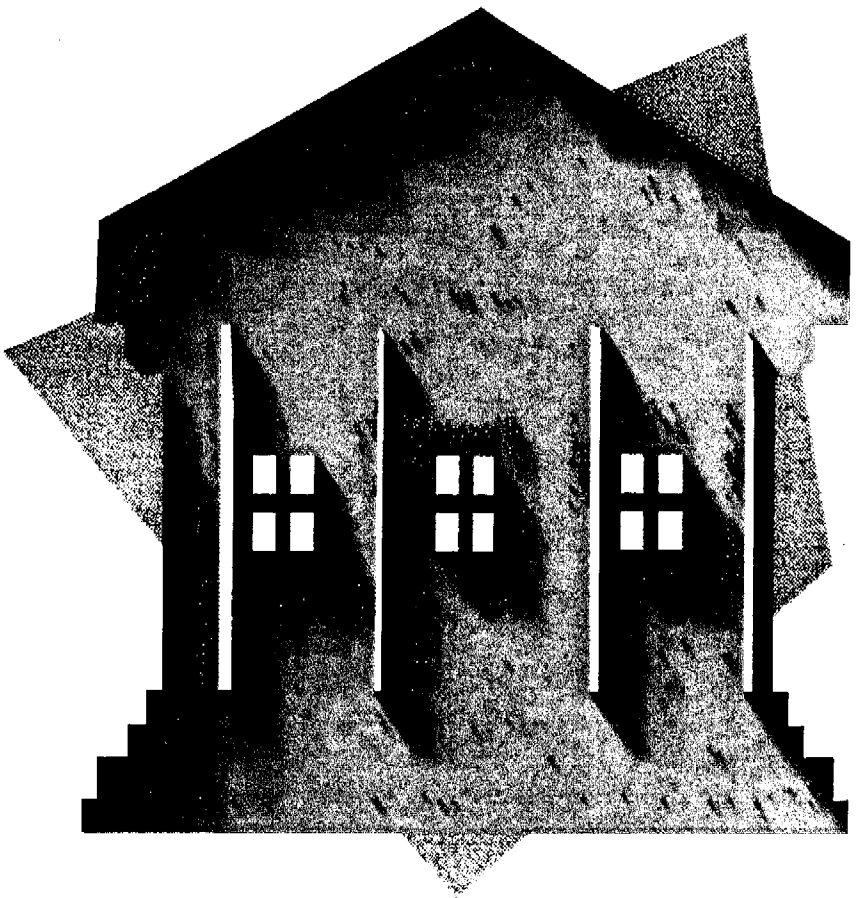
DATE 2-14-2001 BILL NO. SB 48 NUMBER 2

MOTION: Sen Butcher moves DO PASS As Amended

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

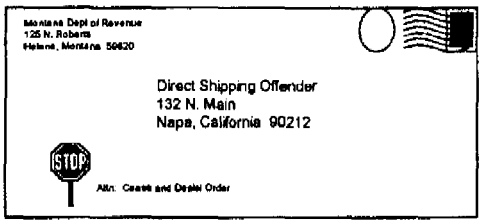
SENATE LABOR & EMPLOYMENT
SENATOR NO. 4
DATE 2-14-2001
BILL NO. SB48

Amendments to Senate Bill 48



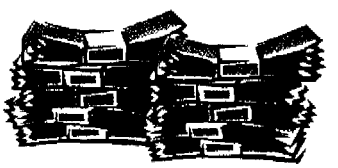
SB48 Penalty Provisions

1st Offense - Certified letter to offender

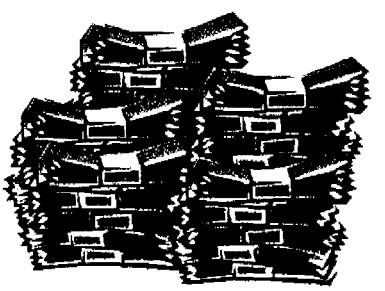


2nd Offense - Civil penalty not to exceed $5,000

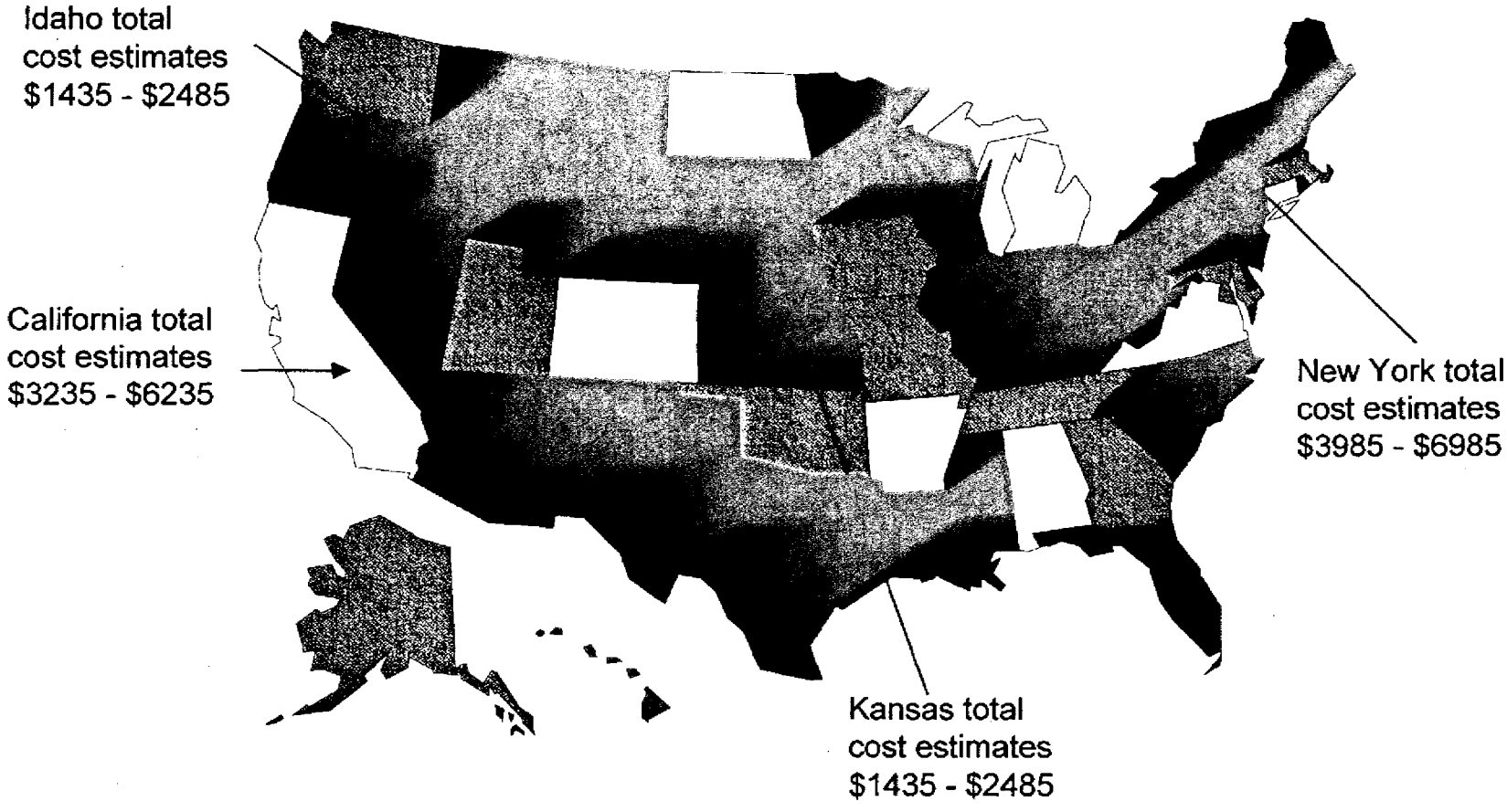
3rd Offense - Civil penalty not to exceed $10,000



Fourth offense - Felony offense and a fine not to exceed $25,000



Estimated Costs to pursue payment of penalty from an offender



MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 9, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Nancy Fritz (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB74, SB421, SB48, 3/5/2001
Executive Action:

{Tape : 2; Side : A; Approx. Time Counter : 0}

HEARING ON SB48

Sponsor: SEN. MIKE SPRAGUE, SD6, BILLINGS

Proponents: Neal Peterson, Department of Revenue
Julie Millam, Montana Christian Coalition
Christy Blazer, Montana & Wine Wholesalers
Mark Staples, Montana Tavern Assn.
David Morrison, Earl's Distributing, Missoula
Brad Griffin, Montana Retail & Restaurant Assns.
Christopher Noose, Montana Youth
Kurt Winegardner, Winegardner Wines
Brian Smith, Montana State Brewers Assn.
Brian Clark, Fun Beverages, Inc.
Patrick Montalban, Liquor Owners Assn.
Art Galloway, Toppers
Sue Zagadors, Miles City
John Sherron, Earl's Distributing, Missoula
Daron Melton, Briggs Distributing, Billings
Dan Devin, Devin Bros. Distributing, Great Falls
Scot Thompson, Thompson Distributors, Butte
Keith Dunn, Bronkens Distributing
Mark Johnston, Thompson Distributing, Butte
Jim MacDonald, Sandy Mac's, Helena
Ardelle Watkins, Gusto Distributing, Great Falls
Don Brocopp, Mountain Distributing, Billings
Dale Markovich, Roach and Smith, Butte
Mike Parker, Pennington's, Great Falls & Havre
Kelly Kulbeck, Cardinal Distributing, Bozeman

Opponents: Timothy Wayne King, self, Billings
Pete Bacheller, self, Billings
Bill Gowen, self, Helena
Mona Jamison, Wine Institute
Lon Mitchell, self
Timothy King, self

Opening Statement by Sponsor:

SEN. MIKE SPRAGUE, SD6, BILLINGS, said he was bringing the bill from the Department of Revenue and he had also been approached by

the liquor industry about the bill. He said this was a pre-introduced bill and it had been around for a while and had been melded into a fair and applicable bill. He said the act clarifies that all alcoholic beverages sold in Montana must be distributed according to code and that out-of-state shippers of alcoholic beverages may not ship directly to residents. The bill also imposes penalties for illegal shipments.

Proponents' Testimony:

Mr. Peterson said out-of-state shipment of alcohol into Montana was difficult to enforce and measure sales, and there was no checking of identification. He presented a chart and information on what the bill did. EXHIBIT**(buh54a08)**

Ms. Millam presented a four minute video and written testimony. EXHIBIT**(buh54a09)** She said under-aged people can access alcohol over the internet. She said it is easy for a savvy student to have liquor delivered to their doorstep. She continued that liquor is available on -line at dozens of sites and youth does not even need a fake ID. She said these shipments cannot be controlled, regulated or tracked, and they disregard state laws.

{Tape : 2; Side : A; Approx. Time Counter : 17.6}

Ms. Blazer said her members deliver alcohol to over 5000 retailers around the state. She referred to interstate shipments of alcohol ordered through the internet as "cyber-booze." She said it is a problem and is still growing. She said SB48 would allow Montana to use enforcement rights given to them by Congress. She noted the 21st amendment controls this commerce clause and an appellate decision had agreed. EXHIBIT**(buh54a10)** EXHIBIT**(buh54a11)** She told the committee, "We are talking about alcohol here, not cheese or sunglasses." She asked the committee to support the bill and not to amend it. "Don't make it a little bit pregnant," she said, "This would be the same as making it a little bit enforceable."

Mr. Staples said under the current laws the alcohol goes to the wholesalers where the tax is collected and then to the distributors who see it is sold to people of the proper age. He said this is not an anti-trade bill, although it does impede age and regulation-free trade.

Mr. Morrison said he had seen a tremendous evolution of business. He said there was a demand for ever-increasing products and he now carried over 2000 different items. "Many customers ask us to find unique products," he said. He added that wineries often to not want to work with the distributors. He said an important part

of their service was to meet demands. He also noted that it was much easier to enforce laws on businesses which were in state.

Mr. Griffin said he supported it because he thought the distributors had an excellent selection now.

Mr. Noose told of friends he knew who were able to acquire alcohol without an ID and inexpensively off the internet. He said they collect the money ahead and plan for parties.

{Tape : 3; Side : B; Approx. Time Counter : 0}

Mr. Winegardner said his shop carries 1500 varieties so choice should not be a problem. He told the committee the reason they should go to the trouble to regulate, and not just ship direct, was because the distributors and retailers follow rules and do it right.

Mr. Smith asked the committee to support the bill because he said it was about equity and regulation.

Mr. Clark said he was a wholesale distributor with 350 accounts, 70 employees, $2 million in wages, and paid $500,000 in excise taxes. EXHIBIT **(buh54a12)**

Mr. Montalban said his members supported the bill.

Mr. Galloway submitted a letter in support. EXHIBIT **(buh54a13)**

Others who appeared in support were **Sue Zagadors, John Sherron, Daron Melton, Dan Devine, Scot Thompson, Keith Dunn, Mark Johnston, Jim MacDonald, Ardelle Watkins, Don Brocopp, Dale Markovich, Mike Parker and Kelly Kulback.**

Opponents' Testimony:

Mr. King said this is a compromise bill but not for consumers. He said there are thousands of Montanans who are consumers. He presented written testimony. EXHIBIT **(buh54a14)**

Mr. Bacheller said there should be a balance of public interest with the prevention of minor access to alcohol. He said SB48 is an anti-consumer bill. He said that as a consumer in Montana he is permitted to buy only that "which is chosen for me." He said the current laws do not allow him to buy allocations from small wineries. He said he would be willing to pay an annual license fee to be able to direct ship a limited quantity of wine from certain wineries. He said as a consumer his interests need to be served. He said if the fine wine he wants to be is unavailable,

the dollars will go unspent and there will be no increase in revenue for Montana. He said this is not a quantity issue, but is a quality issue. He proposed a "Cellar License" for the collector. He said this would be revenue positive, as it would be deposited up front each year. He said it could be tracked on a voluntary system, much the same way that taxes are paid on an honor system.

Mr. Gowen said as a collector he was concerned with the fact that if he wanted to dispose of his collection, he would be a felon, under SB48.

Ms. Jamison said her members totally supported taxation of all wine sales, and they were totally against underage drinking. She said she wondered how many young people ordered wine off the internet. She said she thought that was a "boogie man" issue so the committee could walk out and say they had done something wonderful to stop underage drinking.
{Tape : 4; Side : A; Approx. Time Counter : 0}
She added the fiscal note says there will be no lost revenue, however, no one knew how much revenue was being lost. She called the Department of Revenue estimate of $6.3 million a gross overstatement, and asked what were the assumptions. She noted this sum was not on the fiscal note in the Senate testimony. EXHIBIT**(buh54a15)** She presented a written exhibit concerning the degree of penalties and punishment. She questioned how the fourth conviction could be a felony since to have a felony there must be intent. She asked whose intent would it be: the winery, the worker, or the shipper. She called "felony" excessive and out of proportion, unless this was in the days of prohibition. She said the bill should be killed and the committee should address the problem in a logical, informative method. She suggested they create a cutting edge statute during the interim so they could come back with no opponents. She said it may have been a compromise bill, but not between the wineries and the consumers. She concluded it was a bad law and hurt consumers.

Mr. Mitchell submitted a letter of written testimony.
EXHIBIT**(buh54a16)**

Questions from Committee Members and Responses:

REP. GALLIK asked where the penalty ideas came from. **Mr. Peterson** said the Department of Revenue thought the penalties were too low because to go to California to enforce a $5000 penalty would cost that much. He said it had been $25,000 for the first offense, but $5000 was about as low as they could go. **REP. GALLIK** asked him what he thought of a Cellar License fee. **Mr. Peterson** said he

thought some other states had one. In Montana, he said, they charged a $25 fee for wineries to ship into Montana.

REP. HIMMELBERGER asked what the state tax was on a case of wine. **Mr. Peterson** said it was 27 cents a liter for wine and $4.30 a barrel for beer. **REP. HIMMELBERGER** asked if under SB48 a small brewery would be prohibited from sending beer from Billings to Kalispell. **Mr. Peterson** said they could not use a common carrier. **REP. HIMMELBERGER** asked if a distributor was prohibited from selling to the public. **Mr. Peterson** said a wholesaler may not sell to the public, they must sell to a retailer.

CHAIRMAN MCKENNEY asked **Mr. Morrison** if a wine connoisseur went to a retailer and asked for a wine which was not inventoried what would happen. **Mr. Morrison** said they have directories of all the wineries in the United States. He said they could contact them and assist them with the forms and schedule delivery. Then he said he could give the customer a choice of retailers where they could go and buy the product.

Closing by Sponsor:

SEN. SPRAGUE said the alcohol business is not like any other business. There is a world of control and a world of abuses involved in it, he said. He called it the flip side of "supply and demand," because it is "demand and supply." He added, "Everybody wants change, so long as nothing changes."

The following exhibit is more than the 10 (ten) page limit for scanning.

Exhibit: 8
Date: 3.9.01
SB: 48

The complete exhibit is located with the minutes at the

Montana Historical Society Archives
225 North Roberts
Helena, MT 59620-1202
(406) 444-4775

EXHIBIT 9
DATE 3-9-01
SB 48

Mr.Chairman and members of the committee:

For the record my name is Julie Millam, executive director of Christian Coalition of Montana, our state's largest family advocacy organization representing 40,000 Montana households.

We rise in strong support of Sen. Sprague's bill before you today. We are extremely concerned with underage access to liquor via the internet. This concern is growing across the country. A lawsuit in Michigan involves 9 Universities where students are involved in this practice. The video you will see today will further educate you on just how easy it is for a saavy student to have liquor delivered right to his or her doorstep. This problem must be addressed. On behalf of those I represent, please pass SB 48.

over the issue of direct shipment has caused

to intervene due to

EXHIBIT 10
DATE 3-9-01
SB 48

5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI - Amendment XVIII repealed. Ratified 12/5/1933. *History*

1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

3. The article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII - Presidential terms limits. Ratified 2/27/1951. *History*

1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President, when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII - Presidential vote for District of Columbia. Ratified 3/29/1961. *History*

1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

EXHIBIT 11
DATE 3-9-01
SB 48

3/9/01

To: Kristi Blazer

From: Tim France

Re: Senate Bill 48

Dear Kristi,
Please feel free to use my comments as part of the testimony for today's hearing. Sorry I couldn't be there.

Ladies and Gentlemen of the House:

Thank you for the opportunity to testify in favor of the subject Senate Bill 48. I am the 20-year owner/operator of a retail wine store in Missoula called Worden's Market and Deli. As such, I have been a Montana State Licensee and have worked exclusively within the three-tier system and with Montana Wholesalers the entire time. I am intimately familiar with the workings of the system.

I know that direct shipping of wine is directly affecting my business because many of my customers have told me that they are doing it. Many of them are on Winery mailing lists and belong to Winery Clubs that ship certain products every month or on a regular basis. My feeling is that this option will continue to be utilized on an increasing basis. As a retailer who pays for a license, pays rent on a retail space, who pays every 7 days for wine purchased to inventory a good selection, who pays Montana State tax on same, and then maintains a capable staff in order to cater to our customers, I feel very much betrayed by Montanans shipping directly from the Winery. I also feel betrayed by these direct-ship wineries whose wines I have helped to develop a market for. Certainly as a taxpayer in Montana, I feel betrayed because I feel the increased pressure to help fund important infrastructure

451 North Higgins Avenue · Missoula, Montana 59802 · (406) 549-1293 · Fax (406) 549-6844 · www.wordens.com

such as education with ever-increasing debt and dearth of taxpayers. How then should we walk away from the taxes that should rightfully be paid on these direct-ship wines?

I have spent much time, money and effort courting small-production wineries for a portion of their wines to sell in Montana. Most of them will not work in a three-tier system. They don't have to. They sell all of their products either at the winery or through the mail. I've been treated very badly by some of them. I'm not particularly fond of having their wines sold in Montana without paying for the right to do so; especially when their neighbors *are* willing to make the commitment. If this bill succeeds in passing, then we will be rewarding those producers who respect our system and punishing those who don't.

I am in favor of Senate Bill 48, at least until a more equitable solution can be found.

Tim France, Owner
Worden's Market, Inc.

CLICK IMPORTS

EXHIBIT 12
DATE 3-9-01
SB 48

Eureka Liquor Store

Thursday, October 5, 2000

can we get this?

Mrs. Ella J. Adams
P.O Box 954
Eureka, MT 59917

Dear Mrs. Adams,

I am extremely sorry to inform you that Click Imports can no longer ship wine to your state. Since our last shipment to you, a law was passed that regulated the shipment of wine to consumers in a number of states including Montana. To summarize, it is illegal for us as an importer to send you, the consumer or non-retailer, any type of alcoholic beverage. In this case we cannot send you the six bottles of Fat bastard wine you requested.

This unfortunate turns of events leaves me with no choice but to refer you to outside retailers. One is here in Seattle: it is called Seattle Cellars, contact person Dave Woods. His phone number is (206) 256-0850. The other is in Chicago; it is Sam's Wine and Liquor, contact person Tracy Lewis. Her phone number is (312) 664-4394. Hopefully they will be able to aid you in purchasing Fat Bastard wine. The price will stay the same with the exception of one or two dollars.

I have enclosed your check for $66.00 uncashed. Again I apologize for this inconvenience and hope the above people can help you.

Sincerely,

Abby Brooks
Click Imports

Enclosures

Click Imports Delivered Cost
$66.00/6 bottles = $11.00 per bottle

Fun Beverage sells to Liquor Store
for $7.49
Eurella Liquor Store sells to Consumer
for $9.99

2228-B First Avenue • Seattle, WA 98121 TOLL FREE 800.859.0689 FAX 206.443.2535 URL www.clickimports.com

Includes Montana state tax, wholesaler margin & retailer margin.

Subject: **Confirmation**
Date: Thu, 1 Feb 2001 10:05:17 -0800
From: c
To: 1

Thank you for placing an order v

Your order confirmation number is: 527481

Qty	Producer/Product	Unit Price	Ext. Price	Delivered	MT Retail
1	Robert Mondavi				
	1997 Merlot, Carneros, California	35.00	35.00	$38.20	$34.99
1	Rosemount Estate				
	1999 Diamond Shiraz, Australia	13.00	13.00	$16.20	$11.99
1	Robert Mondavi				
	1998 "Coastal" Chardonnay	9.95	9.95	$13.15	$9.99

Subtotal: $ 57.95
Tax: 3.77
Shipping: 5.85

$9.62/3 = $3.20 per bottle

Grand Total: $ 67.57

Montana retail includes:
wholesaler margin
retailer margin
state alcohol tax

Your order is being shipped to:

Kellin Clark
336 Northridge
Kalispell, MT 59901

Please allow 7 to 10 business days for the arrival of your wine order.

If you have any questions regarding your order, please email us at customercare@wine.com or call 1-888-WINE789 or 707-265-9770. (Do not forget to reference your order number)

Please do remember that if your order contains alcohol, an adult will have to sign for the package. Thank you for choosing wine.com - the number one online source for wine and gifts!

Order from ProFlowers.com and receive a FREE vase (valued at $9.95) with any flower purchase!

EXHIBIT 13
DATE 3-9-01
SB 48

Support

TOPPER'S MARKET

Dear Chairman McKenney and Members of the House Business and Labor Committee:

My name is Art Galloway and I own Topper's Wine Market here in Helena, Montana. I support Senate Bill 48, to clarify the law with respect to the direct shipment of alcohol into Montana.

Choice should not be an issue. My shop carries over 1500 different varieties of wine. I make every effort to obtain any wine that a customer desires.

The only time that I cannot get a particular wine is when the winery itself refuses to sell to a licensed wholesaler in the state.

It is also less expensive to buy wine from my shop than over the internet or by direct shipment. It costs anywhere from $40 to $60 a case to have wine delivered by common carrier, and that price will go up as gas prices go higher. Furthermore, UPS does not understand how to properly handle wine, and does not have temperature controlled trucks.

Through one of the local distributors, I can obtain a case of wine delivered from California for about $6 a case. It comes by way of a Montana trucking company, and is handled properly as part of an entire shipment of wine.

I am only one of a group of specialty wine shops around the state. In Missoula, there is Wordens and Broadway Market. In Hamilton, there is the Bitteroot Emporium. In Bozeman, there is Grums Deli and the Wine Gallery. In Billings, there is the City Vinyard. In Great Falls, there is the Vine and Hop. Kalispell has two wine shops, and Osco provides fine wines throughout the state.

My business is a good small business in Montana, and I again request your support of SB 48.

Sincerely,

Art Galloway
Topper's Market

EXHIBIT 15
DATE 3-9-01
SB 48

JAMISON LAW FIRM
ATTORNEYS AT LAW

MONA JAMISON

POWER BLOCK BUILDING, SUITE 4G
HELENA, MONTANA 59601

PHONE: (406) 442-5581
FAX: (406) 442-8293

To: House Business and Labor Committee
From: Mona Jamison, Lobbyist
Date: March 9, 2000
RE: SB 48

SB 48 makes a fourth and subsequent violation under section (3) a felony. For purposes of comparison I have enumerated a number of crimes which constitute "misdemeanors" under Montana law.

FELONY

Violation of prohibition against direct shipment of alcoholic beverages (wine) by telephone, computer or other device. (4th offense)	A Felony. S.6(4) of SB 48

MISDEMEANORS

1. Criminal possession of specific dangerous drugs.	A Misdemeanor. (45-9-102)
2. Negligent vehicular assault.	A Misdemeanor. (45-5-205)
3. Family member assault (1st and 2nd offenses)	A Misdemeanor. (45-5-208)
4. Stalking (1st offense).	A Misdemeanor. (45-5-220)
5. Negligent endangerment.	A Misdemeanor. (45-5-208)
6. Fraudulently obtaining dangerous drugs.	A Misdemeanor. (45-9-106)
7. Public display or dissemination of obscene material to minors.	A Misdemeanor. (45-8-206)
8. Cruelty to animals.	A Misdemeanor. (45-8-211)
9. Possession of weapon in school building.	A Misdemeanor. (45-8-361)
10. Aggravated interference with parent-child contact.	A Misdemeanor. (45-5-632)

End

EXHIBIT 15
DATE 3-9-01
SB 48

JAMISON LAW FIRM
ATTORNEYS AT LAW

MONA JAMISON

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7. Public display or dissemination of obscene material to minors.	A Misdemeanor. (45-8-206)
8. Cruelty to animals.	A Misdemeanor. (45-8-211)
9. Possession of weapon in school building.	A Misdemeanor. (45-8-361)
10. Aggravated interference with parent-child contact.	A Misdemeanor. (45-5-632)

End

EXHIBIT 16
DATE 3-9-01
SB 48

To: Representative Jim Whitaker
House Business and Labor Committee
For the [redacted]

COMMENTS ON Senate Bill 048

I am only one voice. But I have been raised to believe that one voice of reason in a whirlwind of controversy can (sometimes) be heard. With that in mind, I am writing to you, hoping you will hear this one voice.

Originally, this bill made it a felony for someone like myself to import one case of beer for personal use. The bill has been amended to now make it punitive for the out-of-state distributor who ships the beverage to the individual citizen of Montana.

Much is being made of the fact that this legislative endeavor (still) allows the Montana citizen to travel to the site of the distributor and purchase up to three gallons for return to Montana. In my case that amounts to approximately 700 miles (one way) as the only place to purchase the product is in Oregon. No distributor in Montana carries the product and I have contacted some to see if they would. Because it is not well known, there is no market and therefore, they won't carry it!

In fact, a handout given to the Business and Labor Committee in the Senate stated that SB048 "does not impose a penalty on Montanans who have alcohol shipped to their residence for personal use." At best this is misleading and probably disingenuous. What it does do is make the Distributor in another state or nation liable criminally for shipping it to the Montanan. This, in turn, would mean that those distributors would not be able to ship to Montanans and Montana citizens would be unable to acquire the product. Remember this, the products sought are products that cannot be bought in Montana because Montana distributors do not carry them.

I am an attorney for the State of Montana. Just to be safe in my interpretation, I have run the amended version past other lawyers with whom I work and associate. All interpretations are the same. This bill effectively prevents the citizen of the State from contacting the out-of-state distributor on their own; ordering the beverage, and paying for the shipping as well. This bill does not keep the rights of citizens whole but would once again incrementally cuts a slice of those rights away.

That same handout cited above also states that limited direct shipment laws do not work, and there is no way to enforce compliance. Why then is it attempting to do just that? What is the REAL reason for this bill? We know there can't be much revenue the state is missing by the allowance of direct shipping for personal use. There aren't that many of us individuals who do that. In fact, I suspect that this bill going through the legislative system will cost far more than any revenue it is designed to raise.

Oppose
Lon Mitchell

Needless to say **I am opposed** to this bill passing as written. If I were able, I'd be at your hearing to testify against the bill. But because I am a state employee, it would be necessary for me to take annual leave and I have a work conflict preventing such appearance. However, I should be more than happy to respond to any questions you may have for me. I can be reached on my personal computer at scarlett@unidial.com or at work at (406) 841-2318 or at home at (406) 933-5740

Respectfully,

Lon Mitchell

Lon Mitchell
Attorney, citizen and State employee

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 9, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz			✓
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		✓
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE Mar. 9, 2001

BILL NO. SB48

SPONSOR(S) Sen. Sprague

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Jon Sheron	Missoula MT	Eagles Dist.
(P) O I	Ane Zagorda	Miles City, MT	MtC Beverage
(P) O I	[illegible]	Great Falls	[illegible] Dist.
(P) O I	Chris Noose	Helena MT	Youth
(P) O I	Jim MacDonald	2727 Airport Rd	Sandy Mac's Dist.
(P) O I	Scott Thompson	Butte MT	Thompson Dist
(P) O I	Mark Johnston	Butte MT	Thompson Dist.
(P) O I	Brian Smith	Helena	MT St. Brewers Assn.
(P) O I	Keith Dunn	Bozeman MT	Brown's Dist
(P) O I	Kelly Kulbeck	Bozeman MT	Cardinal Dist
(P) O I	Darren Melton	Billings MT	Briggs Distributing
(P) O I	Steve Erickson	Helena	Clausen
(P) O I	Julie Millam	Helena	MTEC
(P) O I	Kristi Blaze	Helena	MBWWA

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE MAR. 9, 2001

BILL NO. SB 48 SPONSOR(S) Sen. Sprague

"out-of-state alcohol shipment"

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	David Scrimm	Helena, MT	Myself
P O I	Timothy W. King	BILLINGS, MT	MYSELF
P O I	Pete Bachelier	Billings MT	myself
P O I	Mona Jamison	Helena	Wine Inst.
P O I	Tim Jennings	GLASGOW, MT	MYSELF
P O I	BILL GOWEN	HELENA	SELF
P O I	Renee Messmer	Glasgow mt	myself
P O I	DAN DEVINE	GREAT FALLS	self
P O I	Neil Peterson	Helena	DOR
P O I	MIKE PARKER	GT FALLS	FENNINGTON'S, INC
P O I	Dale Markovich	Butte MT	Roach & Smith
P O I	DON BROCOPP	Billings	INT Mountain Dist
P O I	Paul Morrison	Missoula	Earls Distributing
P O I	Mike Day	Helena	Zekes Dist

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE MAR 9, 2001

BILL NO. SB 48

SPONSOR(S) Sen. Sprague

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	KURT WINEGARDNER	BOZEMAN	WINEGARDNERS WINES
(P) O I	STAN KALECZYC	HELENA	ANHEUSER-BUSCH INC.
(P) O I	Patrick M. Montalban	Cut Bank	Liquor Store Owners Ass of Mt.
(P) O I	BRIAN CLARK	KALISPELL 1390 Hwy 2 W	Fun Beverages Inc
(P) O I	BRAD GRIFFIN	Helena	MT. Retail Assn.
(P) O I	BOB PAVLOVICH	BUTTE	Self
P O I			
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 21, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB96, SB438, SB441, SB482, 3/14/2001
Executive Action: SB482, SB441, SB48, SB292, SB438, SB96

REP. LAIBLE said they could add "could be."

CHAIRMAN MCKENNEY said he agreed that it states the situation today.

Mr. Higgins agreed saying "whereas" is a snapshot in time to provide guidance, and represents what is happening today.

REP. LAIBLE withdrew his substitute motion.

REP. BROWN said the amendment makes the bill into a study and it will go into the pool of studies to be voted on.

REP. LAWSON said, "No, this is a bill, and that is why the second fiscal note was requested."

Mr. Higgins said the amendment assigns the matter to the Insurance Commissioner so it will not be in the study pool.

Vote: Motion **carried 18-1 with Brown voting no.**

Motion/Vote: **REP. LAWSON** moved that **SB441 BE CONCURRED IN AS AMENDED. Motion carried 18-1 with Brown voting no.**

EXECUTIVE ACTION ON SB48

Motion: **REP. HIMMELBERGER** moved that **SB48 BE CONCURRED IN.**

Discussion:

Motion: **REP. HIMMELBERGER** moved that **SB48 BE AMENDED.**

Discussion:

REP. HIMMELBERGER said the amendments would allow for a $25 annual renewal fee to purchase a "Connoisseur's License," and to receive direct shipment. The collectors would be allowed to receive up to 24 cases of wine and 24 cases of beer per year. He said the breweries and wineries must register with the state and pay a fee in order to ship into the state. He said that twice a year the connoisseurs would have to pay tax on the wine and beer they received. EXHIBIT **(buh64a05)**

REP. MATTHEWS asked how many licenses they expected to issue.

REP. HIMMELBERGER said he didn't know and there was no way to predict. He said he had lots of e-mail and phone calls.

REP. MATTHEWS said these amendments would bypass the wholesalers and retailers and allow California and Oregon to ship into Montana. He said he had spent 20 years in the bar system and he still believed in the three-tier system. He said he would vote against it.

REP. LAIBLE asked how the bill would affect in-state wineries and breweries.

REP. HIMMELBERGER said it wouldn't because they would be under the same laws as before.

REP. LAIBLE said he was in favor of the amendment and couldn't believe how many e-mails he had. He said it allows for out-of-state purchase for connoisseurs and for collection of taxes. "This accomplishes what the department is trying to do," she said.

REP. MATTHEWS said he hadn't received any e-mail from Miles City.

REP. BROWN said 288 bottles would almost be one a day, and that seemed like a lot to him.

REP. HIMMELBERGER said it seemed like what some other states were doing and that case amount was an average. He said the shipments might be made at a certain time and not available at another time. "You have to get it or it's gone," he said.

REP. GALVIN-HALCRO asked if the license might be used to purchase beer and wine for a group or a club which would make orders and "divvy them up." **REP. HIMMELBERGER** said the license has to be for one person and go to that address and have a special label. He said the beer and wine wholesalers were "on board" with this.

CHAIRMAN MCKENNEY said he supported the amendment although he normally did not support new licensing, but the amendments did allow common sense to enter in.

Vote: Motion **carried 15-4 with Galvin-Halcro, Juneau, Keane, and Matthews voting no.**

Motion: **REP. HIMMELBERGER** moved that **SB48 BE CONCURRED IN AS AMENDED.**

Discussion:
Motion: **REP. LAIBLE** moved **SB48** be amended.

Discussion:

REP. LAIBLE said he thought the felony offense was too strong so he was eliminating it with this amendment.

REP. GALLIK supported this amendment saying a civil penalty was more realistic.

Vote: Motion **carried 16-3 with Galvin-Halcro, Lawson, and Matthews voting no.**

Motion: **REP. LAWSON** moved that **SB48 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. BROWN asked if there would still be consensus if the number of cases was lowered to 12.

REP. HIMMELBERGER said that might bother the connoisseurs,

REP. BROWN said "nibble by nibble" these distributors will lose business.

REP. HIMMELBERGER said these products are not available through distributors. He said larger wineries don't fool around with direct shipment. "This is a bill for the small winery," he said. He said he did not share **REP. BROWN's** opinion that 24 cases was a large amount for a year.

REP. LAIBLE said he was really in favor of the bill with this amendment. He told the committee not to lose sight all of the interested parties said it was acceptable.

Vote: Motion **carried 17-2 with Keane and Lawson voting no.**

EXECUTIVE ACTION ON SB292

Motion: **REP. GALVIN-HALCRO** moved that **SB292 BE CONCURRED IN.**

Discussion:

REP. GALVIN-HALCRO handed out comments from Russ Cravens. EXHIBIT **(buh64a06)** She said the bill doesn't prevents drain cleaners from being listed, it just lists them under the heading where they belong, "drain cleaners."

EXHIBIT 5
DATE 3-21-01
SB 48

Amendments to Senate Bill No. 48
3rd Reading Copy

Requested by Representative Dennis Himmelberger

For the House Business and Labor Committee

Prepared by Gordon Higgins
March 21, 2001 (9:39AM)

1. Title, line 8.
Following: "RESIDENTS"
Insert: "WHO DO NOT POSSESS A CONNOISSEUR'S LICENSE"

2. Title, line 9.
Following: "PUBLIC;"
Insert: "ESTABLISHING A CONNOISSEUR'S LICENSE; ALLOWING LIMITED DIRECT SHIPMENT OF BEER AND WINE FROM OUT-OF-STATE BREWERIES AND WINERIES TO CONNOISSEUR'S LICENSE HOLDERS; PROVIDING THAT OUT-OF-STATE BREWERIES AND WINERIES REGISTER WITH THE DEPARTMENT; LIMITING THE AMOUNT OF BEER OR WINE THAT OUT-OF-STATE BREWERIES AND WINERIES MAY SHIP INTO THE STATE TO CONNOISSEUR'S LICENSEES"

3. Title, line 11.
Strike: "AND"

4. Title, line 12.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"

5. Page 3, line 21.
Following: "license"
Insert: "or connoisseur's license"

6. Page 3, line 25.
Following: "device"
Insert: ", except by persons holding a valid connoisseur's license provided for in [section 7]"

7. Page 5.
Following: line 5

Insert: "(c) possession of beer or wine purchased from an out-of-state brewery or winery if the person possessing the beer or wine holds a connoisseur's license as provided for in [section 7];"
Renumber: subsequent subsections

8. Page 6.
Following: line 6
Insert: "NEW SECTION. **Section 7. Connoisseur's license -- application -- fee.** (1) A person in this state desiring to receive direct shipments of beer or wine from an out-of-state brewery or winery for the person's own consumption and not for resale shall file with the department an application for a connoisseur's license. The application must be accompanied by a registration fee in the amount of $50.

(2) Each application for a license must be on a form prescribed by the department and must set forth the name of the applicant, the applicant's home or business address, proof that the applicant is a least 21 years of age, and other information that the department may require.

(3) A connoisseur's license expires on June 30 of each calendar year. A licensee may annually renew a license with the department by paying a $25 renewal fee.

(4) The holder of a connoisseur's license may not sell beer or wine to the public.

(5) The department shall adopt rules to provide procedures for the application for and the provision of a connoisseur's license."
Insert: "NEW SECTION. **Section 8. Payment of taxes -- authority of department.** (1) A person holding a connoisseur's license shall pay, on June 30 and December 31, the beer and wine taxes imposed by Title 16, chapter 1, part 4, on beer or wine that is received by direct shipment from an out-of-state brewery or winery during the previous 6-month period.

(2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by the department, and pay the tax for shipments received."
Insert: "NEW SECTION. **Section 9. Direct shipment of beer or wine -- limitations.** (1) The holder of a connoisseur's license may receive up to 288 bottles or 24 cases of wine or 576 bottles or 24 cases of beer from an out-of-state brewery or winery during a 12-month period for personal use and not for resale.

(2) A licensee under this section shall forward to the out-of-state brewery or winery a distinctive address label, provided by the department, clearly identifying any package that is shipped as a legal direct-shipment package to the holder of a connoisseur's license.

(3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer or wine received from an out-of-state brewery or winery and pay all applicable excise taxes, as provided for in Title 16, chapter 1, part 4, imposed on the receipt of beer or wine during the previous 6 months."

"NEW SECTION. **Section 10. Out-of-state brewery or winery registration -- limitation on shipping -- penalty.** (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

(a) 1440 bottles or 60 cases of beer for breweries; and

(b) 720 bottles or 60 cases of wine for wineries.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery must distribute the brewery's or winery's product through a licensed wholesale distributor.

(4) An out-of-state brewery or winery who violates the provisions of this section is subject to the penalties provided for in [section 6]."

Insert: "NEW SECTION. **Section 11. Penalty for noncompliance.** (1) Except as provided in [section 10], a person who violates the provisions of [sections 7 through 11] commits a civil offense.

(2) A person convicted under subsection (1):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist committing the violation;

(b) for a second offense, shall be fined a civil penalty not to exceed $500; and

(c) for a third or subsequent offense, shall be fined a civil penalty not to exceed $2,500."

Insert: "NEW SECTION. **Section 12. {standard} Codification instruction.** [Sections 7 through 11] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 7 through 11]."

Insert: "NEW SECTION. **Section 13. {standard} Effective dates.** (1) Except as provided in subsection (2) [this act] is effective on passage and approval.

(2) [Sections 7 through 11] are effective October 1, 2001."

- END -

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 21, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

DATE MARCH 21, 2001 Bill NO. SB 48 NUMBER

MOTION: REP. LAWSON Do Concurr As Amended 17-2

Name	AYE	NO
Rod Bitney, V.C., Majority (R)	✓	
Gary Matthews, V.C. , Minority (D)	✓	
Roy Brown (R)	✓	
Dave Gallik (D)	✓	
Kathleen Galvin-Halcro (D)	✓	
Dennis Himmelberger (R)	✓	
Carol Juneau (D)	✓	
Jim Keane (D)		✓
Rick Laible (R)	✓	
Bob Lawson (R)		✓
Nancy Rice-Fritz (D)	✓	
John Musgrove (D)	✓	
Bill Price (R)	✓	
Sylvia Bookout-Reinicke (R)	✓	
Allen Rome (R)	✓	
Don Steinbeisser (R)	✓	
Brett Tramelli (D)	✓	
Jim Whitaker (R)	✓	
Joe McKenney (R) Chairman	✓	
Count	17	2

House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

DATE 3-21-01 Bill NO. 48 NUMBER

MOTION: REP HIMMELBERGER ~~HEM~~ MOVE AMENDMENT 15-4

Name	AYE	NO
Rod Bitney, V.C., Majority (R)	✓	
Gary Matthews, V.C. , Minority (D)		✓
Roy Brown (R)	✓	
Dave Gallik (D)	✓	
Kathleen Galvin-Halcro (D)		✓
Dennis Himmelberger (R)	✓	
Carol Juneau (D)		✓
Jim Keane (D)		✓
Rick Laible (R)	✓	
Bob Lawson (R)	✓	
Nancy Rice-Fritz (D)	✓	
John Musgrove (D)	✓	
Bill Price (R)	✓	
Sylvia Bookout-Reinicke (R)	✓	
Allen Rome (R)	✓	
Don Steinbeisser (R)	✓	
Brett Tramelli (D)	✓	
Jim Whitaker (R)	✓	
Joe McKenney (R) Chairman	✓	
Count	15	4

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 48** (third reading copy – blue) **be concurred in as amended.**

Signed: _____
Representative Joe McKenney, Chair

To be carried by Representative Joe McKenney

And, that such amendments read:

1. Title, line 8.
Following: "RESIDENTS"
Insert: "WHO DO NOT POSSESS A CONNOISSEUR'S LICENSE"

2. Title, line 9.
Following: "PUBLIC;"
Insert: "ESTABLISHING A CONNOISSEUR'S LICENSE; ALLOWING LIMITED DIRECT SHIPMENT OF BEER AND WINE FROM OUT-OF-STATE BREWERIES AND WINERIES TO CONNOISSEUR'S LICENSE HOLDERS; PROVIDING THAT OUT-OF-STATE BREWERIES AND WINERIES REGISTER WITH THE DEPARTMENT OF REVENUE; LIMITING THE AMOUNT OF BEER OR WINE THAT OUT-OF-STATE BREWERIES AND WINERIES MAY SHIP INTO THE STATE TO CONNOISSEUR'S LICENSE HOLDERS;"

3. Title, line 11.
Strike: "AND"

4. Title, line 12.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"

5. Page 3, line 21.
Following: "license"
Insert: "or connoisseur's license"

3:25
3-21

Committee Vote:
Yes 17, No 2.

641346SC.hdc

6. Page 3, line 25.
Following: "device"
Insert: ", except by persons holding a valid connoisseur's license provided for in [section 7]"

7. Page 4, line 13.
Strike: the first "a"
Insert: "A"

8. Page 5.
Following: line 5
Insert: "(c) possession of beer or wine purchased from an out-of-state brewery or winery if the person possessing the beer or wine holds a connoisseur's license as provided for in [section 7];"
Renumber: subsequent subsections

9. Page 6, line 3.
Strike: "and"

10. Page 6, line 4.
Following: "$10,000"
Insert: "; and
(d) for a fourth or subsequent offense, shall be fined a civil penalty not to exceed $25,000"

11. Page 6, line 5 through line 6.
Strike: subsection (4) in its entirety

12. Page 6.
Following: line 6
Insert: "NEW SECTION. **Section 7. Connoisseur's license -- application -- fee.** (1) A person in this state desiring to receive direct shipments of beer or wine from an out-of-state brewery or winery for the person's own consumption and not for resale shall file with the department an application for a connoisseur's license. The application must be accompanied by a registration fee in the amount of $50.
(2) Each application for a license must be on a form prescribed by the department and must set forth the name of the applicant, the applicant's home or business address, proof that the applicant is a least 21 years of age, and other information that the department may require.
(3) A connoisseur's license expires on June 30 of each calendar year. A licensee may annually renew a license with the

department by paying a $25 renewal fee.

(4) The holder of a connoisseur's license may not sell beer or wine to the public.

(5) The department shall adopt rules to provide procedures for the application for and the provision of a connoisseur's license."

Insert: "NEW SECTION. **Section 8. Payment of taxes -- authority of department.** (1) A person holding a connoisseur's license shall pay, on June 30 and December 31, the beer and wine taxes imposed by Title 16, chapter 1, part 4, on beer or wine that is received by direct shipment from an out-of-state brewery or winery during the previous 6-month period.

(2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by the department, and pay the tax for shipments received."

Insert: "NEW SECTION. **Section 9. Direct shipment of beer or wine -- limitations.** (1) The holder of a connoisseur's license may receive up to 288 bottles or 24 cases of wine or 576 bottles or 24 cases of beer from an out-of-state brewery or winery during a 12-month period for personal use and not for resale.

(2) A licensee under this section shall forward to the out-of-state brewery or winery a distinctive address label, provided by the department, clearly identifying any package that is shipped as a legal direct-shipment package to the holder of a connoisseur's license.

(3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer or wine received from an out-of-state brewery or winery and pay all applicable excise taxes, as provided for in Title 16, chapter 1, part 4, imposed on the receipt of beer or wine during the previous 6 months."

"NEW SECTION. **Section 10. Out-of-state brewery or winery registration -- limitation on shipping -- penalty.** (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

(a) 1,440 bottles or 60 cases of beer for breweries; and

(b) 720 bottles or 60 cases of wine for wineries.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery shall distribute the brewery's or winery's product through a licensed wholesale distributor.

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302."

Insert: "NEW SECTION. **Section 11. Penalty for noncompliance.** (1) Except as provided in [section 10], a person who violates the provisions of [sections 7 through 11] commits a civil offense.

(2) A person convicted under subsection (1):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist committing the violation;

(b) for a second offense, shall be fined a civil penalty not to exceed $500; and

(c) for a third or subsequent offense, shall be fined a civil penalty not to exceed $2,500."

Insert: "NEW SECTION. **Section 12. Codification instruction.** [Sections 7 through 11] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 7 through 11]."

Insert: "NEW SECTION. **Section 13. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 7 through 11] are effective October 1, 2001."

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO SENATE BILL 48

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on April 6, 2001 at 11:00 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:
Sen. Mike Sprague, Chairman (R)
Rep. Joe McKenney, Vice Chairman (R)
Sen. Edward Butcher (R)
Rep. Dennis Himmelberger (R)
Rep. Gary Matthews (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 48 Amended

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 48

CHAIRMAN MIKE SPRAGUE opened the conference committee meeting. They were to deal with the amendments only. To go into the body of the bill would only be for clarification for those who needed a review.

The bill was requested originally from the Dept. of Revenue and they asked him to be the sponsor. Another subsequent bill was requested by the distributors. Both of those bills were introduced early in the session. The bills came together basically with a compromise in the Dept's original request.

Any inference or accusations that special interests or the chairman brought this bill forward were to be dispensed with now. There have been innuendos bordering on the edge of threats. He wanted to clarify for the record how this bill originated.

In the original bill, there were no provisions made for shipping specialty wines that were perceived not to be available by the normal chain of outlets. During this process, there have been changes.

Comments and Questions from Committee Members and Responses:

CHAIRMAN SPRAGUE asked **REP. DENNIS HIMMELBERGER** to explain why and how his amendments came to be on the bill and his justification for the amendments.

REP. HIMMELBERGER explained that the bill had been brought to his attention at transmittal time. While he was at home, he received several phone calls from people who were concerned about SB 48. People who had been ordering specialty wines or beers from out-of-state wineries or breweries were concerned they would be prohibited from doing this. He did not want this to happen.

During the committee hearing on the bill, there were people who testified they were primarily ordering wine from small boutique wineries and felt the bill would prohibit them from doing that. He decided to address those concerns and see if an amendment could make everyone happy. In the hearing it was stated the Dept. was initially bringing the bill to prevent underage people from obtaining alcoholic beverages. Another Dept. concern was tax revenues. The Dept. believed the state was losing revenue because of direct shipments.

One solution was to create a connoisseur license. This seemed to address the Dept's concerns as well as others.

CHAIRMAN SPRAGUE explained to the committee that there were people in attendance who could answer most any question they might have. Most of the concerned entities were at the hearing.

CHAIRMAN SPRAGUE informed the committee that there had been a great deal of concern over the original bill in that people could

become felons. He asked the **Legislative Staffer, Gordon Higgins,** to speak to that issue.

Mr. Higgins stated that the bill in its original form contained a four-tier penalty system. The first three were civil offenses at different levels. The fourth or subsequent violation of the direct shipment issue would be a felony and the person would be fined an amount not to exceed $25,000. That was the amendment the Senate heard prior to the bill being transferred to the House. That language was intact when it was transferred to the House Business and Labor Committee.

CHAIRMAN SPRAGUE asked for clarification. Was the violation on the part of the person receiving the wine or beer or was it on the shipper from out-of-state.

Mr. Higgins said that in looking at that language, a person convicted under subsection three, which is the lead in, states that a person in the business of selling alcoholic beverages in another state or country who imports or distributes these beverages in violation of Title 16, is the one who commits the offense. It was not the person who received the shipment.

CHAIRMAN SPRAGUE offered the Dept. felt that "felon" was the word that would trigger enforcement and confiscation or give them the ability to go to federal court across border lines. That was the first issue he wanted clarified once and for all. As it stood right now, "felon" had been taken completely out. The shipper nor the receiver could be convicted as a felon.

REP. HIMMELBERGER said that was correct but added that was not his amendment. It was **REP. RICK LAIBLE'S** amendment.

SEN. ED BUTCHER offered amendments EXHIBIT **(ccs78sb0048a01).**

Motion: Senator Butcher moved that **SB 48 BE AMENDED (EXHIBIT 1) SB004802.ace.**

Discussion:

SEN. BUTCHER had heard the bill from the beginning. Penalties are put into statute either for an income source or a punitive source. The key here was the fourth violation. The people being addressed in the bill are from out of state. They might feel somewhat insulated from any punitive action if there were not a penalty at the level of some degree of enforcement by the state. He felt strongly that the bill should include the word "felony."

If a company violates the law three times, they certainly are going to pay attention if they had a felony action brought against them.

REP. HIMMELBERGER did not see the need for a felony action. There are already restrictions on out-of-state wineries or breweries.

Neil Peterson, Dept. of Revenue. In the House committee, they did amend the penalty provision to remove the felony and leave the fine at $25,000 for the fourth offense (see amendment #10, page 6, line 14).

REP. MCKENNEY agreed with the amendment **(EXHIBIT 1).** Three minor warnings is more than enough. The fourth should be more punitive with a felony action.

REP. MATTHEWS also supported the amendment. The Dept. of Revenue needs all latitude in order to enforce the law.

CHAIRMAN SPRAGUE asked **Neil Peterson** to explain the Dept's view on the amendment.

Neil Peterson reported that he had spoken with Director Alme about the penalty provisions. Director Alme's opinion was the Dept. could forgo the felony provision; however, an increase of the fine would be satisfactory but he would leave that decision to the committee.

SEN. BUTCHER related that he did have another amendment that would address the amount of the fine. He did prefer his first amendment.

REP. HIMMELBERGER reiterated that the amount had been increased to $25,000. With the restrictions on the limitations of imports, he felt these kinds of companies would not take the risk of violating the law more than once.

SEN. RYAN disagreed. If there should be a company that felt they were making more than the penalty, they might be willing to go ahead, violate the law and take the penalty. He felt that a felony provision would be a real hindrance.

CHAIRMAN SPRAGUE offered that if the Dept. can live without a felony provision, the committee should weigh in on that. He asked for clarification from the Dept. of Revenue.

Mr. Peterson articulated the Dept.'s rationale. The thinking behind the felony has two major points. If a felony provision is

on the books, a clear message is being sent to out-of-state businesses that Montana is taking their public policy very seriously. The next is for long-arm jurisdiction. If the state should go into another state's court system, a felony is treated very seriously. That state would take the case more seriously. In the spirit of cooperation, the Dept. believed the bill to be very important and did not want to jeopardize it over the issue of a felony provision. The Dept. decided to forgo the felony provision; and if the fine were increased, that would be acceptable.

SEN. BUTCHER felt that as the legislative body, it was their responsibility to look at what makes the most sense. It seemed to have been clearly expressed that the felony provision would give the Dept. the tool to enforce the law.

{Tape : 1; Side : B; Approx. Time Counter : 0}

SEN. BUTCHER mentioned that his second amendment would increase the fine from $25,000 to $50,000. He did feel that the felony provision was the main point.

CHAIRMAN SPRAGUE spoke to the committee and said they should take each issue in the following order: the quantity of beer and wine, the connoisseur's license, and the penalty provisions.

Gordon Higgins explained the quantities allowed for direct shipment to individuals holding a connoisseur's license are 24 cases of wine or 24 cases of beer within the 12 month period that the license was valid. He had broken down the cases of wine and beer by bottle in case a license holder wanted to receive a partial shipment. There are 288 bottles in 24 cases of wine. There are 12 bottles per case of wine or 9 liters a case. There are 576 bottles of beer in 24 cases. A combination of beer and wine, as the amendment is written, can be received under these provisions.

REP. MCKENNEY said that when the House had received this bill there were red flags. This seemed to be a troubled bill. Amendments were worked on in a subcommittee and **REP. HIMMELBERGER** and his group had done a good job. Their amendment was put on in the House committee. He then addressed **SEN. RYAN'S** question of whether the connoisseur's license was necessary. He definitely believed that it was if the bill were to be passed out. There were some misunderstandings concerning the amount of wine and beer that would be allowed.

Motion: **REP. GARY MATTHEWS** moved that **SB 48 BE AMENDED** EXHIBIT**(ccs78sb0048a02) Printed on April 6, 2001 (10:43AM) SB004804.agh.**

Discussion:

REP. MATTHEWS explained that there seemed to be a great deal of concern on the quantity allowed to be delivered to individual Montanans. With a new license, consideration should be given to cutting the amount in half. Twenty-four cases of wine are a lot of wine. That is approximately one bottle of wine a day. He handed out a survey from other states with a similar kind of connoisseur license EXHIBIT**(ccs78sb0048a03)**. Twelve cases would still rank high in comparison with these other states.

Another issue in the amendment addressed the fact that wine and beer are different. A person may buy a wine connoisseur license for $50 or a beer connoisseur license for $50. If they wanted both it would cost $100.

CHAIRMAN SPRAGUE asked **Jason Wood, Dept. of Revenue,** if the state had a law in statute concerning licenses at this time. **Jason Wood** stated that currently for an off-premise license, one could have a beer license, a wine license or a beer and wine license. The fee is $200 for beer, $200 for wine or $400 for a beer and wine license. This amendment would basically mirror what is currently in place.

REP. HIMMELBERGER commented that the amendment seemed to muddy the waters. He asked if this amendment would increase the cost of administering the license. **Mr. Wood** felt that it would not significantly increase the cost. It would require a one page form and would not really put on any additional costs.

Vote: **The AMENDMENT TO SB 48 BE ADOPTED. Motion carried 5-1. Rep. Himmelberger voted no.**

Neil Peterson, Dept. of Revenue. A point of note was a person could still bring in three gallons of liquor into the state on their physical person. A person could do that every day of the week. Go out of state and come back in. In SB 48 the only change was a person had to have the liquor in their actual physical possession.

REP. HIMMELBERGER wanted to go on record that he thought he was voting only on splitting up the licenses and not the quantity. He would have said more concerning the quantity but he also did not think that would have made any difference to the other committee members. He would have voted no on both issues.

SEN. BUTCHER stated again that his motion was still on the table and he still felt that the felony provision was needed.

REP. MCKENNEY said if this amendment were accepted then the language on page 6, line 14 needed to be taken out. **SEN. BUTCHER'S** amendment would be substituted into line 14 as the fourth subsequent offense.

REP. MCKENNEY asked how the Dept. would prefer to handle the prosecution of cases using civil or felony actions. **Mr. Peterson** reiterated a felony provision would give them additional clout to go into another state's court. A civil penalty might not receive the same serious attention in another state. But they do have the ability to go to federal court under the 21st Amendment Enforcement Act to get an injunction. With a large enough civil penalty, they believed that would give them sufficient clout.

CHAIRMAN SPRAGUE inquired if any other states have included a felony provision for this type of violation. **Mr. Peterson** said he thought there were five or six other states.

CHAIRMAN SPRAGUE then inquired if any other states have high penalties and no felony. **Mr. Peterson** was not sure. He knew of one state that fined an out-of-state shipper $35,000.

Mr. Peterson said the least costly would be a civil action. People would resist a felony charge more than a civil penalty.

REP. MCKENNEY did not believe a winery or brewery would ever go beyond the first or second offense. If someone goes to the third or fourth offense, they would be purposefully breaking the law. Therefore, a felony provision would make sense.

{Tape : 2; Side : A; Approx. Time Counter : 0}

CHAIRMAN SPRAGUE thanked **REP. HIMMELBERGER** for his hard work on the bill. He asked him if he could support the bill as amended. **REP. HIMMELBERGER** replied that he was not too concerned with the felony amendment. He was mainly concerned with the quantities and he could not support the bill as amended.

SEN. RYAN did not think the Dept. really wanted or needed the felony provision at this time.

CHAIRMAN SPRAGUE suspected the felony provision would make the enforcement more difficult for the Dept. It appeared that the Dept. did not necessarily want the felony provision which was somewhat of a surprise to him. But, they are the ones who would

have to implement when everyone else is long gone. Therefore, which way should the committee go.

Mr. Peterson spoke and said the bill was very important to the Dept. and they wanted the bill to go in the direction of least resistance. Civil penalty was good and it was something they could make work. If there should be problems enforcing the law down the road, they can come back in the next session and ask for the felony provision.

REP. MCKENNEY thought the felony provision was a good idea but he would go with the Dept's wishes.

SEN. BUTCHER withdrew his amendment **(EXHIBIT 1)** that dealt with the felony provision.

Motion: SEN. BUTCHER moved that **SB 84 BE AMENDED** EXHIBIT **(ccs78sb0048a04) SB004801. ace.**

Discussion:

SEN. BUTCHER explained that the penalty fine would be raised from $25,000 to $50,000 for the fourth subsequent offense.

CHAIRMAN SPRAGUE asked if this amount would be acceptable to the Dept. **Mr. Peterson** responded that $50,000 would be fine.

Vote: The AMENDMENT TO SB 48 BE ADOPTED. Motion carried 5-1. Rep. Himmelberger voted no.

Two amendments for SB 48 were adopted by the committee. Gordon Higgins prepared the two into one amendment EXHIBIT **(ccs78sb0048a05) SB004804.agh, April 6, 2001 (12:38PM).**

EXHIBIT NO. 1
DATE 4-6-01
BILL NO. SB48

Amendments to Senate Bill No. 48
2nd Reading/2nd House Copy

Requested by Senator Ed Butcher

For the Senate Conference Committee

Prepared by Connie Erickson
April 6, 2001 (10:44AM)

1. Page 6, line 12.
Following: "~~and~~"
Insert: "and"

2. Page 6, line 13.
Strike: "; AND"
Insert: "."

3. Page 6.
Following: line 16
Insert: "(4) A fourth or subsequent violation of subsection (3) is a felony and the person shall be fined an amount not to exceed $25,000."

- END -

EXHIBIT NO. 2
DATE 4-6-01
BILL NO. SB 48

Amendments to Senate Bill No. 48
Reference Copy

Requested by Representative Gary Matthews

For the Senate Conference Committee

Prepared by Gordon Higgins
April 6, 2001 (10:43AM)

1. Page 6, line 18.
Strike: "LICENSE"
Insert: "licenses"
Strike: "FEE"
Insert: "fees"

2. Page 6, line 19.
Following: "BEER"
Insert: "only,"
Strike: the first "OR"
Following: "WINE"
Insert: "only, or both beer and wine"

3. Page 6, line 21.
Following: "OF"
Insert: ":
(a)"
Following: "$50"
Insert: "for a beer connoisseur's license;
(b) $50 for a wine connoisseur's license; or
(c) $100 for a beer and wine connoisseur's license"

4. Page 6, line 26.
Following: "FEE"
Insert: "for a beer connoisseur's license or a wine connoisseur's license and a $50 renewal fee for a beer and wine connoisseur's license"

5. Page 7, line 8.
Following: "(1)"
Strike: "THE"
Insert: "Subject to the provisions of [section 7], the"

6. Page 7, line 9.
Strike: "288"
Insert: "144"
Strike: the first "24"
Insert: "12"
Strike: "576"
Insert: "288"
Strike: the second "24"
Insert: "12"

7. Page 7, line 11.
Following: "RESALE."
Insert: "A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license."

- END -

EXHIBIT NO. 3
DATE 4-6-01
BILL NO. SB 48

STATE	NUMBER OF CASES
California	2 per month
Colorado	2 per month
Idaho	2 per month
Illinois	2 per year
Iowa	2 per month
Minnesota	2 per year
Missouri	2 per year
New Mexico	2 per month
Oregon	2 per month
Washington	2 per year
West Virginia	2 per month
Wisconsin	1 per year
Wyoming	2 per year
Louisiana	4 per year
New Hampshire	6.6 wine per year 6.6 liquor per year
Delaware	5 wine per year 6 beer per year
Georgia	5 per year per shipper

EXHIBIT NO. 4
DATE 4-6-01
BILL NO. SB48

Amendments to Senate Bill No. 48
2nd Reading/2nd House Copy

Requested by Senator Ed Butcher

For the Senate Conference Committee

Prepared by Connie Erickson
April 6, 2001 (10:43AM)

1. Page 6, line 14.
Strike: "$25,000"
Insert: "$50,000"

- END -

EXHIBIT NO. 4
DATE 4-6-01
BILL NO. SB48

Amendments to Senate Bill No. 48
2nd Reading/2nd House Copy

Requested by Senator Ed Butcher

For the Senate Conference Committee

Prepared by Connie Erickson
April 6, 2001 (10:43AM)

1. Page 6, line 14.
Strike: "$25,000"
Insert: "$50,000"

- END -

EXHIBIT NO. 5
DATE 4-6-01
BILL NO. SB 48

Amendments to Senate Bill No. 48
Reference Copy

Requested by Representative Gary Matthews

For the Senate Conference Committee

Prepared by Gordon Higgins
April 6, 2001 (12:38PM)

1. Page 6, line 14.
Strike: "$25,000"
Insert: "$50,000"

2. Page 6, line 18.
Strike: "**LICENSE**"
Insert: "**licenses**"
Strike: "**FEE**"
Insert: "**fees**"

3. Page 6, line 19.
Following: "BEER"
Insert: "only,"
Strike: the first "OR"
Following: "WINE"
Insert: "only, or both beer and wine"

4. Page 6, line 21.
Following: "OF"
Insert: ":
(a)"
Following: "$50"
Insert: "for a beer connoisseur's license;
(b) $50 for a wine connoisseur's license; or
(c) $100 for a beer and wine connoisseur's license"

5. Page 6, line 26.
Following: "FEE"
Insert: "for a beer connoisseur's license or a wine connoisseur's license and a $50 renewal fee for a beer and wine connoisseur's license"

6. Page 7, line 8.

Following: "(1)"
Strike: "THE"
Insert: "Subject to the provisions of [section 7], the"

7. Page 7, line 9.
Strike: "288"
Insert: "144"
Strike: the first "24"
Insert: "12"
Strike: "576"
Insert: "288"
Strike: the second "24"
Insert: "12"

8. Page 7, line 11.
Following: "RESALE."
Insert: "A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license."

- END -

CONFERENCE COMMITTEE

on House amendments to Senate Bill 48
Report No. 1, April 6, 2001

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered House amendments to **Senate Bill 48** (reference copy - salmon) and recommend this Conference Committee report be adopted.

For the Senate:

Chair

For the House:

Vice-Chair

Amendment Coordinator

Secretary of Senate

And, recommend that **Senate Bill 48** (reference copy - salmon) be amended further as follows:

1. Page 6, line 14.
Strike: "$25,000"
Insert: "$50,000"

2. Page 6, line 18.
Strike: "LICENSE"
Insert: "licenses"

ADOPT

REJECT

AC SB 48-1

781345CC.srf

Strike: "FEE"
Insert: "fees"

3. Page 6, line 19.
Following: "BEER"
Insert: "only,"
Strike: the first "OR"
Following: "WINE"
Insert: "only, or both beer and wine"

4. Page 6, line 21.
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(a)"
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Following: "(1)"
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Insert: "Subject to the provisions of [section 7], the"

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Strike: the second "24"
Insert: "12"

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Following: "RESALE."
Insert: "A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license."

- END -

DATE 4-6-01

SENATE COMMITTEE ON Conference Committee

BILLS BEING HEARD TODAY: SB 48

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Lee Buerlocher	0761	DOR	48	X	
Jason Woods	0711	DOR	48	X	
Neil Peterson	1941	DOR	48	X	
JOHN DELANO			48		
Mona Jamison	442-5581	Wine Dist.	48	X	
Mark Staples	443-4345	Montana Tavern Assn.	48	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY